



**State of Alaska • Department of Health and Social Services
Senior and Disabilities Services**

**CFR 42 §441.301(c)(6) Transition Plan for
Home and Community-Based Services Settings**

Version #1 - Original March 17, 2015

Version #2 Draft for public comment - September 14, 2015

Version #2 Final - October 16, 2015

Version #3 Draft - Updated February 9, 2016

Introduction

The Alaska Department of Health and Social Services, Division of Senior and Disabilities Services (SDS) submits the third version of its transition plan in accordance with CFR 42 §441.301(c)(6). This plan now describes the four components of settings evaluation activities to be undertaken by SDS.

Part 1 – Educational Activities to Date

Description of the efforts made by SDS to inform and educate providers and other stakeholders about the changes to federal regulations, and to gain insight into how the changes will impact service delivery.

Part 2 – Systemic Analysis

Description of the process used to determine the extent to which existing state regulations and practices encompass the requirements for home and community-based settings.

Part 3 – Activities to Achieve Settings Compliance

The State's plan to achieve compliance with federal regulations, including actions required for assessment of home and community-based services settings, validation of results, remediation processes, heightened scrutiny determinations, transition of recipients from non-compliant settings, and ongoing monitoring, as well as actions to accomplish required statutory, regulatory and policy changes, and timeline for accomplishing all activities.

Part 4 – Input from the Public

A summary of public comment to date and SDS response

Appendix A – Systemic Review of Statute and Regulation

Appendix B – Settings Qualities Checklist and Exploratory Questions for HBC Settings

Appendix C – Voluntary Provider Self-Assessment of Settings Tool

Appendix D – Evidence of Public Information and Opportunity for Public Comment

Part 1

EDUCATIONAL ACTIVITIES FOR PROVIDERS, RECIPIENTS, AND OTHER STAKEHOLDERS

SDS decided that the best approach to initially assessing the settings aspects of Alaska's home and community-based services program would be to work with the stakeholder community to gain an understanding of the potential impact of the new federal regulations on service delivery. As SDS began a review of state regulations and policies, it implemented concurrently a process of sharing information about the new regulations and of gaining feedback from shareholders through series of contacts that included on-line webinars, interactive community forums, and informative updates via SDS E-Alerts, the email network used to send notices and other information to providers.

To educate providers regarding the new regulations, and to encourage providers to review the locations where they provide services, SDS created the voluntary *Provider Self-Assessment of Settings* survey for provider to use to evaluate their operations in light of the settings requirements. A variation of the survey was posted online for two purposes: 1) gaining feedback regarding providers' perceptions of their own compliance with those requirements, and 2) discovering the settings issues that could benefit from technical assistance.

The educational activities and learning opportunities offered to providers regarding home and community-based services settings are shown in the following table:

Home and community-based services settings			
Educational activities offered by SDS to providers, recipients, and other stakeholders			
Date		Communication/Event	Purpose/Outcome
2014			
March	19	SDS E-Alert	Announced finalization of new CMS regulations and key areas of change
April	1	Webinar	First Information-Sharing Webinar: Overview of new CMS regulations
	4	SDS E-Alert	April 1 Webinar materials made available
June	10	Webinar	Second Information-Sharing Webinar and announcement of community forums

	27	SDS E-Alert	Invitation to community forums in Fairbanks, Kenai, Anchorage, Juneau, and statewide by teleconference
August	Community forum		Interactive forum for information on new regulations, ideas from stakeholders, Q&A
	18	Fairbanks	
	19	Kenai	
	20	Anchorage	
	21	Juneau	
	22	Statewide teleconference	
September	15	SDS E-Alert	Updates/ clarifications of CMS regulations; evaluation using <i>Provider Self-Assessment of Settings Survey</i>
October	2	SDS E-Alert	<i>Provider Self-Assessment of Settings Survey</i> and FAQs released with October 31 due date
	15	Webinar	Q & A on <i>Provider Self-Assessment of Settings Survey</i>
	16	SDS E-Alert	<i>Provider Self-Assessment of Settings Survey</i> due date extended to November 14
	21	Webinar	Q & A on <i>Provider Self-Assessment of Settings Survey</i>
	27	SDS E-Alert	Additional FAQs on CMS regulations released
November	7	SDS E-Alert	<i>Provider Self-Assessment of Settings</i> reminder
	10	SDS E-Alert	Open Letter from SDS Director
2015			
January	21	SDS E-Alert	Save the Date for Public Comment
	26	SDS E-Alert	<i>Transition Plan</i> available for public comment
	30	Webinar	Q&A on <i>Transition Plan</i>
September	15	SDS E-Alert	Revised <i>Transition Plan</i> available for public comment
	29	Webinar	Q&A on Revised <i>Transition Plan</i>
2016		Anticipated	
February		E-Alerts and Webinars to be scheduled	Transition Plan Version 3 available for public comment

March 15-30		Incorporate public comment; submit Transition Plan Version 3 to CMS	
December 2016		Draft, solicit public comment, and submit to CMS Transition Plan Version 4 to include results of mandatory self-assessment, verification of findings, and plans for remediation efforts through remaining transition time	

Part 2

SYSTEMIC ANALYSIS OF STATE COMPLIANCE WITH NEW FEDERAL REGULATIONS

To evaluate compliance with federal requirements for home and community-based settings, SDS undertook a comprehensive review of its service philosophy and state regulations, and a project to assess the characteristics of settings in Alaska. The project sought to initially identify non-compliant settings through an internal review of certified providers and a voluntary review performed by the providers themselves. SDS also made in-person site visits to review internally-identified providers with possibly isolating settings and to review supported employment workplaces.

Review of the SDS Mission, Vision, and Principles

In the 1970s, Alaska embraced the concepts of choice, inclusion, and independence embodied in the Social Security Act by joining the national movement toward deinstitutionalization by developing community alternatives. This philosophy is formalized in the SDS Mission, Vision and Service Principles. From time to time, as new materials such as the Americans with Disabilities Act and the *Olmstead* decision inform the home and community-based system of service, SDS reviews its philosophy and enriches statewide advocacy for recipients by incorporating the values advanced in those materials.

The assessment of state compliance with the new regulations began with a review of SDS philosophy embedded in its Mission, Vision and Service Principles. This philosophy guides the development of regulations and policies and, as a result, is incorporated in the practices of both the State and the service providers. Because Alaska providers share this philosophy, SDS and the providers are able to work in concert to maintain a well-balanced and responsive home and community-based system.

SDS concludes that its philosophy reflects the values promoted by the new requirements for home and community-based settings.



State of Alaska • Department of Health and Social Services Senior and Disabilities Services

Mission, Vision, and Principles

MISSION: *Senior and Disabilities Services promotes health, well-being and safety for individuals with disabilities, seniors and vulnerable adults by facilitating access to quality services and supports that foster independence, personal choice and dignity.*

VISION: *Choice, safety, independence and dignity in home and community-based living*

SERVICE PRINCIPLES: *Senior and Disabilities Services is person-centered and incorporates this value into the following service principles:*

- *We and our partners are responsible and accountable for the efficient and effective management of services.*
- *We and our partners foster an environment of fairness, equality, integrity and honesty.*
- *Individuals have a right to choice and self-determination and are treated with respect, dignity and compassion.*
- *Individuals have knowledge of and access to community services.*
- *Individuals are safe and served in the least restrictive manner.*
- *Quality services promote independence and incorporate each individual's culture and value system.*
- *Quality services are designed and delivered to build communities where all members are included, respected and valued.*
- *Quality services are delivered through collaboration and community partnerships.*
- *Quality services are provided by competent, trained caregivers who are chosen by individuals and their families.*

Systemic Review of State Statutes and Regulations

To gauge the extent to which current state regulations ensure compliance with federal setting requirements, SDS reviewed state statutes and regulations governing Medicaid waiver services, assisted living home licensing, foster care licensing, and the home and community-based services provider standards in the SDS *Conditions of Participation*.

Because SDS refined its philosophy and practices, including updating its regulations and policies, as new directives were issued, SDS concludes that the state regulations and policies applicable to waiver services are consistent with the new federal regulations, and support integrated settings, full access to the community, and recipient initiative, autonomy, and independence; nonetheless, SDS finds that the requirements regarding settings can be clarified through additional language in SDS regulations and *Conditions of Participation*, as outlined in Part 3, the State Plan for Achieving Compliance section. This language will also amend regulations found by SDS and CMS to be “silent” on settings requirements.

The Department of Health and Human Services will establish a stakeholder group called the interagency settings compliance committee (ISCC). ISCC will have a person-centered focus that is transparent to participants and the community while providing accountability to all parties involved. The overarching mission for the ISCC will be to ensure that the State is not only in compliance with the CMS settings rule but also that the rule is ingrained in the practice of HCBS providers.

The purpose of this committee is to:

- Evaluate State Statute and Regulations to ensure compliance with CMS Rule
- Regulatory changes will be released for public comment prior to promulgation. Revised service definitions, standards and provider qualifications that will ensure all services provided through the 1915(c) waivers are compliant with the CMS rule will be subject to a public comment period.
- Develop interagency policies that increase oversight and compliance to rule and improve outcomes for consumers
- Engage stakeholder community on regulation changes and department updates

Membership in the ISCC will include:

- Division of Senior and Disabilities Services
- Division of Health Care Services
- Division of the Office of Children Services
- Office of the Long Term Care Ombudsman
- Division of Pioneer Homes

The systemic review of State statutes and regulations relevant to settings is attached as Appendix A.

Internal Review of Waiver Programs

Alaska operates four home and community based services waiver programs: Intellectual and Developmental Disabilities (IDD), serving those who experience only intellectual or developmental disabilities and who meet the level of care for an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID); Alaskans Living Independently (ALI), serving those 21+ who experience only physical disabilities and meet the nursing facility level of care (NFLOC); Adults with Physical and Developmental Disabilities (APDD), for those 21+ who have both physical and developmental disabilities and meet NFLOC; and Children with Complex Medical Conditions (CCMC), serving those up to age 21 who meet NFLOC.

In addition to the systemic regulatory review for CMS, SDS conducted an internal review of its regulations, certification and compliance activities to determine which services and settings in each of its four waivers (IDD, ALI, APDD, and CCMC) would need to be evaluated for compliance with the federal settings requirements. Through this internal review, SDS determined that because the following services are provided in private homes, evaluation for compliance is not required:

- Care coordination (all four waivers)
- Respite (in home) (all four waivers)
- Chore (all four waivers)
- Environmental Modifications (all four waivers)
- Intensive Active Treatment (IDD, APDD, CCMC)
- Nursing Oversight and Care Management (IDD, CCMC)
- Specialized Medical Equipment (all four waivers)
- Meals (home-delivered) (all four waivers)
- Specialized Private Duty Nursing (IDD, APDD)

Additionally, SDS found that the following services are provided in settings that will need to comply with the CMS settings regulations:

<i>Setting type</i>	<i>Setting</i>	<i>Service Category</i>	<i>Waiver Population</i>
<i>Residential</i>	Licensed assisted living home	Residential habilitation- Group home	IDD, APDD
	Licensed foster home	Residential habilitation,- Family habilitation (child) Family habilitation (adult)	IDD, CCMC, APDD
	Licensed assisted living home	Residential supported living	ALI, APDD
	Provider-owned, leased or operated housing	Supported living	IDD, APDD
<i>Non-residential</i>	Facility-based	Day habilitation	IDD, APDD, CCMC
	Facility-based	Adult day	ALI, APDD
	Employment site	Supported employment *	IDD, APDD
	Facility-based	Meal, congregate	All four waivers

* The Supported Employment service has two billing codes and rates, Group and Individual, but the service is the same. The settings analysis will focus on provider-owned, leased, or operated supported employment sites, rather than supported employment in community-based settings or group versus individual supported employment.

SDS also conducted an internal review to gather information on possible institutional settings, services provided on the grounds or adjacent to a public institution, and settings that might be perceived as isolating recipients from the greater community.

Because there were no intermediate care facilities for Alaskans with intellectual and developmental disabilities, residents needing services were relocated outside of Alaska prior to 1961. Thereafter, the opening of Harborview Developmental Center, a state-owned and operated residential facility in Valdez Alaska, made it possible for 175 Alaskan residents to receive services in-state. Following amendment of the Social Security Act in 1981, the State developed a home and community-based services program that included the certification of provider-owned or -controlled intermediate care facilities. As more families found community supports, the number of Harborview residents dropped to 80 individuals making the cost of maintaining the facility unsustainable. The State was able to transition the remaining residents into their communities because the necessary home and community-based services infrastructure was in place. Harborview Developmental Center was closed in 1997; at the same time, the state

decertified all provider-owned or -controlled intermediate care facilities for individuals with intellectual and developmental disabilities, making Alaska free of IDD institutional facilities.

On the basis of a review of this history, provider certification policies, and a comparison of the physical addresses where waiver services are provided to the physical addresses of Alaska's public institutions, SDS finds that there are no waiver services provided in institutions, and only a few service settings located in a building on the grounds of, or immediately adjacent to, a public institution in Alaska. SDS is prepared to work with these providers to bring each into settings compliance, or bring forward to CMS for Heightened Scrutiny, once the providers have completed the mandatory settings self-assessment. For the few services authorized to be provided out of state (when there are no providers for certain services within Alaska), SDS will require proof of settings compliance from those other states' Medicaid entities.

Using the expertise of Provider Certification & Compliance, Quality Assurance, Operations, Residential Licensing, and other state staff as well as the physical addresses of waiver services, SDS identified three areas where waiver services could be viewed as being provided in possibly isolating settings. These areas are farmstead-model programs, day habilitation centers, and supported employment sites. SDS conducted several initial site visits using a checklist based on the materials provided in the CMS Toolkit. The checklist is attached as Appendix B.

While SDS believes the providers for each of these services and programs will be able to become settings-compliant with time, SDS will wait for each provider to complete the mandatory self-assessment before making a determination whether the setting should be forwarded to CMS for Heightened Scrutiny.

Voluntary Provider Self-Assessment of Settings

SDS created the *Provider Self-Assessment of Settings* survey for providers for two purposes: 1) to serve as a teaching tool to inform providers of the new federal regulations, and 2) to be used as a tool to evaluate the extent to which the provider meets the new settings requirements. The survey was constructed so that each element of the settings characteristics was emphasized by presenting it as a question for provider evaluation. SDS conducted two statewide webinars to train providers on how to complete the survey. The online survey was made available on the SDS website, and was open for participation October 1 through November 14, 2014.

The survey could be printed for the provider's self-assessment, or alternatively, providers could participate in an online survey. The online survey was structured so that a provider of services need only fill out the survey once, while taking into consideration every setting where home and community-based services were provided when formulating a response. The survey consisted of two parts: the first set of questions pertained to all home and community-based settings; the second set of questions were applicable only to provider-owned or controlled residential settings. All questions used a Yes/No format, followed by a text box for the respondent to provide additional information in narrative form.

All providers, except for those providing care coordination services only, were strongly encouraged to participate in the survey. The survey responses came from providers that represent locations statewide and offer services in all types of settings.

Ninety (21%) of the 439 certified home and community-based services providers responded. Of these 90 responses, 11 (12%) were considered to be incomplete because the provider did not answer all the questions. The remaining 88% responses were split evenly between two categories: those that were deemed complete and needing no further action (44%), and those that were complete but, based on the responses, need follow-up.

SDS concluded from this voluntary self-assessment of settings that many settings will likely be categorized as partially compliant, and more work is needed to help providers understand the settings requirements and become fully compliant. Accordingly, SDS has decided that participation in the self-assessment must be mandatory for all providers of services not provided in a recipient's own home.

A copy of the *Provider Self-Assessment of Settings* survey is available in the SDS News Archives portion of the [SDS website](#), as are links to a variety of home and community-based settings training materials, including a *Settings Checklist and Exploratory Questions, Frequently Asked Questions*, a PDF version of the survey itself, and copies of the training webinar PowerPoint presentation.

Part 3

ACTIVITIES TO ACHIEVE SETTINGS COMPLIANCE

Mandatory Provider Self-Assessment of Settings

SDS developed and offered the voluntary *Provider Self-Assessment of Settings* so that providers could evaluate their settings and make corrections if settings requirements were not met. Because the response rate for use of this tool was inadequate, SDS has planned another approach to training and provider evaluation that will require review and reporting on the status of all settings in which residential habilitation, residential supported living, day habilitation, adult day, supported employment, , and congregate meal services are provided.

Beginning in February, 2016, SDS will offer training regarding settings through webinars and self-paced formats that will address settings requirements and use of the setting assessment tool. The training will be mandatory, with completion of the training, as evidenced by passing of a final exam, required not later than February 29, 2016, or SDS will begin the provider decertification process. Program administrators responsible for the service categories shown on the table below must attend the training.

<i>Setting type</i>	<i>Setting</i>	<i>Service Category</i>
<i>Residential</i>	Licensed assisted living home	Residential habilitation, group home
	Licensed assisted living home Licensed foster home	Residential habilitation, family habilitation
	Licensed assisted living home	Residential supported living
	Provider-owned, leased or operated housing	Supported living
<i>Non-residential</i>	Facility-based	Day habilitation
	Facility-based	Adult day
	Employment site	Supported employment *
	Facility-based	Meals, congregate

* The Supported Employment service has two billing codes and rates, Group and Individual, but the service is the same. The settings analysis will focus on provider-owned, leased, or operated supported employment sites, rather than supported employment in community-based settings or group versus individual supported employment.

Following the training, program administrators will be given a “key” to a self-assessment tool. Like the voluntary self-assessment tool, this tool will be based on the CMS Toolkit example, but it will also incorporate formatting changes based on suggestions for clarity and flow that

were made by providers who participated in the voluntary self-assessment. The tool will be finalized by the end of January, so that program administrators can obtain the key and complete the self-assessment soon after attending the training and passing the exam.

The tool will include questions regarding settings compliance and will include space to provide information about how and when a provider will become compliant with the requirement. The responses to the remediation sections will be considered the first provider remediation plan.

For tracking purposes and to ensure 100% completion of the self-assessment, SDS will cross reference open “keys” with the addresses of all residential and non-residential settings that must be evaluated. SDS will require that providers with multiple service locations complete, not later than April 30, 2016, a separate assessment for each address to capture the degree of compliance in each. Through the SDS electronic e-Alert system, SDS will send bi-weekly reminders of the requirement of completion of the settings assessment by that date. SDS will contact and offer technical assistance to providers that do not submit settings assessments by April 1, 2016. Providers that do not complete settings assessments by April 30th will be subject to decertification.

Beginning in May, SDS will conduct an initial desk review on all settings assessment responses, and analyze each for completeness and compliance with settings requirements by June 30, 2016. The analysis will include initial categorization of settings in a four-tiered structure, as well as determine whether the remediation plan included in the survey is adequate and complete. The categories are as follows:

- *Fully Compliant.* The setting has the characteristics required for home and community-based services, and is integrated in and supports full access by recipients to the greater community.
- *Emerging Compliance.* The setting does not meet all requirements, but is partially integrated and provides some supports for access by recipients to the greater community; the provider will be able to bring the settings into compliance through remediation.
- *Insufficient Compliance (Presumed Institutional).* The setting has institutional qualities but, SDS believes that the provider does provide services in a home and community based setting. SDS will submit evidence for heightened scrutiny to CMS for a determination of whether home and community based services can be provided in the setting.
- *Non-Compliant.* Nursing facilities, ICF/IIDS, hospitals, or located on the grounds of or adjacent to a public institution, as well as those settings that fail to submit a survey, insufficient evidence to make a compliance determination, or indicate they do not intend to comply with settings requirements.

Survey Validation and Settings Verification

In order to validate the findings of the mandatory self-assessment settings survey, SDS will initiate a process of further examining a sample of settings survey responses in July, 2016. This sample will be of sufficient size to ensure statistical validity of the information provided in self-assessments at a 95% confidence level, and will be appropriately representative of compliance category (the four tiers identified above), setting type (residential and nonresidential), and geographic area of the state. The exact percentage of sites that will be included in the validation and on-site review samples will be determined once the analysis determining which compliance category each setting falls into has been completed. The Research and Analysis Unit will use software at <http://www.raosoft.com/samplesize.html> to identify the sample sizes for each.

SDS plans to use two main methods to verify that the sampled settings were appropriately and correctly identified by level of compliance with the CMS settings requirements.

Focused desk review: SDS will conduct a review of self-assessments and related information obtained by Provider Certification and Compliance Unit through the provider certification process that supports provider self-identification of settings categories. If necessary, SDS may require providers to submit additional documentation. Focused desk reviews could result in assignment to a different category of settings compliance if upon review, there are indicators that cause concern or require more consideration. SDS will review concerns arising from lack of settings documentation, quality oversight activities, incident reports, complaints, recipient surveys, or reviews by partner organizations.

Onsite review: When a focused desk review indicates a need for further evaluation of a particular sampled setting due to participant health, welfare and/or safety concerns as identified in the self-assessment or any other SDS process, SDS will conduct an onsite review. Onsite reviews will evaluate the mandatory self-assessment results against the Settings Checklist (see Appendix C) and evidence of recipient integration into the greater community gathered during the onsite review.

The state can at its discretion conduct additional focused and on-site reviews of settings that present with health and welfare concerns or issues.

SDS will also validate provider self-assessment survey responses by conducting a recipient survey. SDS is exploring the National Core Indicators survey tool and process to evaluate its capacity for providing recipient data on settings compliance. SDS will also have conversations with stakeholder groups around the state about how each can assist recipients to report on non-compliant settings.

For HCB waiver services that are provided out of state, the other state's Medicaid oversight authorities will verify and validate through attestations that each setting is in compliance with settings requirements.

Remediation Plans

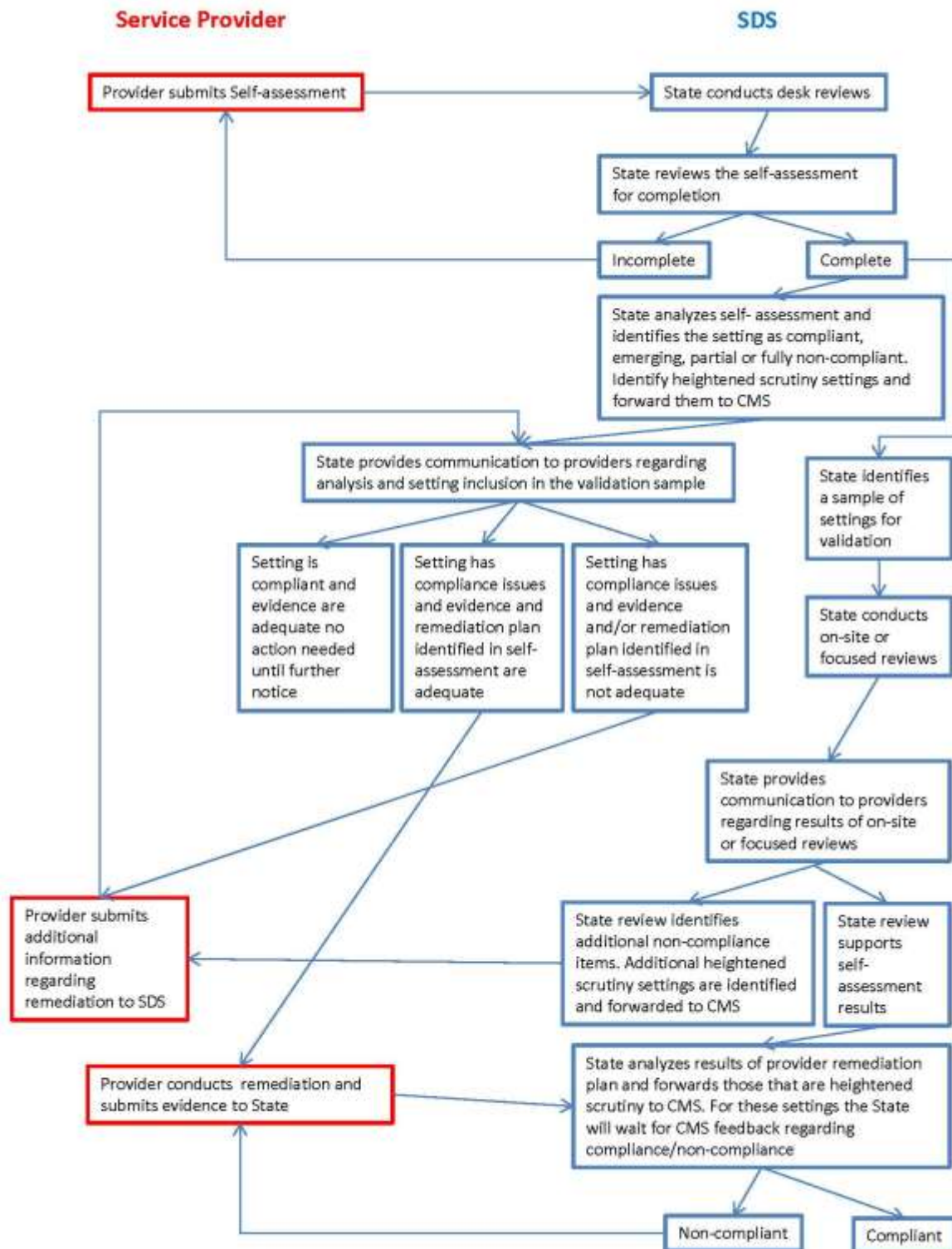
By FY17 SDS should have received all self-assessments that include the initial remediation plan for providers with any non-compliance with settings requirements. After initial desk review, SDS will notify the provider of settings status and whether the setting will be part of the sample that will receive a focused desk review or site visit. The notification will also include a determination about whether the initial remediation plan, which is part of the self-assessment, is adequate.

SDS will provide guidance and technical assistance for development of remediation plans found to be insufficient. A remediation plan must include timelines for completion and address changes to agency policy or to the physical environment designed to bring the setting into compliance. Each remediation plan will be tailored by that provider to that provider's settings issues, and will involve particular details addressing the proper course of action. SDS will determine the timeline for compliance with submission of revised provider remediation plans, dependent upon the number of settings or number of issues of non-compliance for each setting. The timelines for submission of a revised remediation plan will be between 30-90 days.

SDS will prioritize work with providers in the validation sample to evaluate remediation plans and corrective actions. Providers not in the sample will still receive notification of their setting compliance category with a timeline for submission if their remediation plan is insufficient. Providers failing to participate or cooperate in a timely manner with any of the mandated requirements for continued compliance with certification will be subject to the decertification and sanction processes, up to and including disenrollment from the Medicaid program per 7AAC 130.220. The goal for settings compliance of all providers is June 30, 2018, so that ample time remains to transition any recipients who receive services in settings that will not be compliant by March, 2019.

The flow of self-assessment survey results from submission through review to remediation is presented in Exhibit A on the next page.

Exhibit A Flow of Survey Results



Heightened Scrutiny

A standardized home and community-based settings verification report will be the State's primary method for collecting information for the CMS "heightened scrutiny" process for those settings presumed to be institutional or isolating by federal regulation. Whether a setting is considered to isolate recipients will be determined by the provider's responses to the questions about isolation on the self-assessment tool which were taken directly from the CMS Checklist.

The remediation plans developed by providers will be made public in Version 4 of Alaska's Transition Plan in December, 2016, and will be provided to CMS as evidence that a setting overcomes the presumption that isolation makes it institutional in nature. CMS will make a determination based on the evidence provided.

Ongoing Monitoring

SDS will incorporate settings compliance into its existing monitoring processes. Provider certification, quality assurance operations, and SDS partners will incorporate a settings compliance review component into existing monitoring processes. At the time of initial certification, providers will be expected to have taken the program administrator training, and to ensure their setting(s) are compliant. Existing providers will become setting compliant through the survey and remediation process prior to the renewal of their certification. Onsite reviews that are necessitated for reasons other than settings compliance will include concomitant review of settings compliance.

The SDS Provider Certification and Compliance Unit will be conducting site reviews for certified provider settings and will add settings compliance to the Unit's monitoring process. The IDD Unit will commence site reviews of other non-residential settings, supported employment and prevocational services settings in FY17, as needed. To broaden capacity for ongoing monitoring and since over 90% of settings are residential, SDS will work with residential licensing units that are part of other divisions within the Department of Health and Social Services (the Residential Licensing Unit within Division of Health Care Services licenses assisted living homes, and the Office of Children's Services certifies foster homes) so that settings assessments will become a component of the bi-annual onsite surveys conducted by those units. SDS plans to mobilize other willing groups to conduct settings compliance monitoring activities as needed, including SDS grant managers who visit congregate meals sites as part of grant oversight duties, care coordinators, who are required to visit every recipient in every setting contained in the recipient's plan of care at least once a year. SDS will utilize advocacy groups such as the Governor's Council of Disabilities and Special Education, the Office of the Long Term Care Ombudsman, and the Alaska Commission on Aging for supporting provider education. These partners will be trained to evaluate settings

compliance and report issues of non-compliance through Central Intake for possible investigation or remediation with providers.

Transition of Recipients from Noncompliant Settings

During the transition period, if a provider receives training and remediation on settings and seeks recertification as a provider of home and community based waiver services but SDS determines the provider remains noncompliant with the settings requirement, SDS will work to relocate recipients. SDS will also relocate recipients in settings that are likely to be non-compliant after July, 2018, the deadline when the recertification period has concluded.

SDS is confident that most providers will be able to become settings-compliant by December, 2018. As FY18 draws to a close, SDS will be able to identify the number of recipients likely to need a transition plan due to anticipated non-compliance with settings rules. Transition steps to take place between July 2018 and January 2019 will include providing advance notice of settings noncompliance to affected recipients, their care coordinators, and all other interested parties; providing information on the other service options available to help them make an informed decision; identifying the entities that will need to be involved in the transfer to other providers; and ensuring that critical services are in place in advance of the transition.

SDS has the knowledge and experience to initiate and complete transitions at least 60 days before the March 2019 deadline for the few recipients that may be affected by non-settings-compliant providers, using relocation procedures used when SDS takes closure action against a provider. Appropriate SDS program management staff, to include Intellectual and Developmental Disabilities (IDD) and Nursing Facility Level of Care (NFLOC) unit staff, will work on these transitions on a case by case basis. The Division's Adult Protective Service unit staff will be involved with the transition of vulnerable adults at any point that SDS determines the setting to be a health and safety risk.

Amendments to Regulations and *Conditions of Participation*

Through its internal review of regulations and the providers' voluntary evaluation of home and community-based service settings, SDS determined that amendments to regulations governing the waiver program and to provider standards in the SDS *Conditions of Participation* will bring SDS into full compliance with federal regulations. SDS also communicated with the Divisions of Health Care Services, Alaska Pioneer Homes, and the Office of Children's Services to ensure the assisted living homes and foster homes, for which they have administrative responsibility, have regulations that support the qualities required of home and community-based settings.

Because the State is focusing its regulatory efforts on achieving compliance with the CMS person-centered planning and conflict-free care coordination requirements by July 1, 2016, the date of reauthorization of Alaska's four waiver programs, SDS plans for the amendments to regulations and *Conditions of Participation* to achieve settings compliance to follow. Beginning in July, 2016, in collaboration with the Alaska Department of Law, SDS will initiate a project to amend regulations and the *Conditions of Participation* to address settings compliance, including amendments where the state is "silent" on federal settings requirements. The year-long process will include appropriate internal and required external review, and outreach to stakeholders will include E-Alerts and webinars to solicit public comment. The process will end with regulations that will be effective July 1, 2017.

Regulation changes

- Develop requirements regarding settings for provider certification section of regulations
- Clarify that the care coordinator must document service and settings options presented to the recipient, as well as specific providers considered for those services, during development of the Plan of Care
- Renew emphasis on non-disability specific settings among service options discussed and offered
- Specify that any discussion of residential options must include consideration of the recipient resources for room and board, and whether those resources would cover the cost of a private unit
- Specify that any modifications in a recipient's living conditions in a provider-owned or -controlled residential setting must be supported by a specific assessed need and justified in the Plan of Care

Conditions of Participation: Revisions to provider standards

- Specify that residential services providers must support recipient control of personal resources
- Clarify that the settings where services are to be provided must be physically accessible for the individual recipient

Amendments to Statutes

Language in state statutes, AS 47.33.060 and AS 47.33.300, regarding visitors in assisted living homes, appears to be inconsistent with federal settings requirements; however, these statutes also indicate that an assisted living home may not adopt a house rule that restricts the rights of

residents under any other law. SDS has referred the question of whether a statutory change is required to the Department of Law. Should a change be necessary, SDS, in collaboration with the Division of Health Care Services, will develop a technical legislative proposal that will align the statutes with federal regulations. The Department of Health and Social Services will introduce the legislative proposal during the state legislative session that begins in January 2017.

In addition to seeking statutory changes, SDS will collaborate with the Division of Health Care Services to effect changes in assisted living home regulations to remove any language barring residents from having visitors of their choosing at any time. The regulation pertaining to safeguards, 7 AAC 75.220, that would seem to restrict choice if a visitor abuses, neglects or exploits a recipient may need clarification to assure notice of intent to bar a visitor is provided, and informed consent obtained from the recipient.

Revised Transition Plan Timeline

Time	Activity	Outcome
2015	SDS internal review and revision of the Transition Plan	Internal comment incorporated
January 6 - 23		
January 26 - February 28	Public comment period for the Transition Plan	Stakeholder input gathered, documented and incorporated into Transition Plan
January 30	Stakeholder workshop on Transition Plan and regulation changes	Stakeholder input gathered/documented; incorporated in Transition Plan
March 1 - 15	Transition Plan finalized; submitted to CMS for approval	State in full compliance with CMS Transition Plan requirements
July - September	SDS amends Transition Plan in response to CMS review	SDS develops revised process for verifying HCB characteristics of all service settings
September 15 – October 15	Public comment period for Transition Plan Version 2	Stakeholder input gathered, documented and incorporated into Transition Plan Version 2
September 28	Stakeholder workshop on Transition Plan Version 2 and regulation changes	Stakeholder input gathered/documented; incorporated in Transition Plan Version 2
October 15 - 17	Transition Plan Version 2 finalized; submitted to CMS for approval	State in full compliance with CMS transition plan requirements
January, 2016	SDS receives weekly technical assistance from CMS on settings assessment and verification process	Improved Transition Plan, Version 3 is developed
January, 2016	SDS develops Program Administrator training curriculum regarding HCBS settings regulations	State is prepared to train program administrators

Mid-February 2016	30-day Public Comment period and Tribal Consultation for Transition Plan Version 3 begins	Stakeholder input gathered/documented; incorporated in Transition Plan Version 3
February 2016	Mandatory settings survey training completed by Program Administrators	Program Administrators are fully informed regarding settings requirements
March 15-30, 2016	Incorporate public comment into Transition Plan Version 3	Stakeholder input gathered/documented; incorporated in Transition Plan Version 3
March 31, 2016	Transition Plan Version 3 submitted to CMS	Transition Plan Version 3 approved by CMS
April 30, 2016	Mandatory Self-Assessment of Settings completed by Program Administrators	Settings self-assessment process is furthered
Sept 30, 2016	SDS analyzes results of Mandatory Settings Self-Assessment with initial remediation plan, organizes into categories of compliance, and notifies providers of findings	Settings self-assessment process is completed
July, 2016	SDS begins process to amend regulations (including where regulations are currently silent), Conditions of Participation, and statutes, including establishing the Interagency Settings Compliance Committee (ISCC)	
Aug– Dec, 2016	ISCC subcommittees meet to shape regulatory and policy changes needed to increase settings compliance	
March, 2017	SDS completes validation of survey results and notifies providers of any non-compliance discoveries.	
June, 2017	Approve remediation plans resulting from validation findings.	
July, 2017	All regulations, Conditions of Participation, and statutes are fully compliant with settings requirements	
Oct-Nov, 2017	Transition Plan Version 4, including categorization results of settings survey and remediation plan,	

	receives public comment and final revisions	
Oct 2017- June 2018	SDS monitors progress of remaining remediation plans	
December, 2017	SDS submits Version 4 of Transition Plan, including evidence for Heightened Scrutiny determinations, if necessary	
June 30, 2018	Finalize determinations for settings compliance resulting from remediation plans.	
August, 2018	Recipients in noncompliant settings receive notice of the need to transition to compliant settings, outlining the process and including information on other service options available, to help them make informed decisions.	
March 1, 2019	Recipients have been relocated to compliant settings.	

Part 4

PUBLIC COMMENT AND RESPONSE

Initial Transition Plan

The State received comments regarding the initial state transition plan from one stakeholder only after extensive outreach that included workshops, webinars, and an opportunity for all providers to conduct a self-assessment of their settings as either an internal exercise or an on-line survey. Those comments (in bolded text) addressed in this section.

The document lacks a plan to assess providers that did not participate in the on-line survey.

The intent of the on-line survey was to provide a tool for self-assessment by which a provider could identify areas that must be addressed to bring its operations into compliance with the settings requirements. SDS personnel, including certification staff and assessors, identified providers that appeared to be non-compliant; other state personnel conducted on-site surveys of the providers that were identified.

SDS has added settings questions to its survey checklist and will assess settings as part of the certification process. As of March, 1, 2015, to be certified or for renewal of certification, providers will be required to have the home and community-based settings characteristics identified by federal regulation.

Only assisted living homes and foster homes were assessed and addressed in the transition plan.

In regard to this comment, the stakeholder referenced a document that is the analysis of state regulations pertaining to settings, not the state transition plan. In addition to meeting certification requirements, residential facilities that provide services for home and community-based services recipients must be licensed as assisted living homes or foster homes. SDS reviewed regulations applicable to those facility types to determine whether they are sufficient to meet the settings requirements and where additional regulations might need to be enacted to achieve into compliance.

SDS, through a review of its own regulations and an internal review of certified providers, addressed the settings qualities of non-residential provider type, including day habilitation and supported employment that were of concern to the stakeholder.

The transition plan timeline is missing a timeframe for provider remediation; a 6-month timeframe is suggested.

SDS believes the timeframe would vary on the basis of the nature of the settings characteristic that is to be remediated; consequently, a 6-month timeframe for compliance that would be applicable to all providers would seem unworkable. SDS believes that most providers can be brought into compliance through technical assistance with the new settings requirements and improvements to the certification process; those that cannot will be subject to the formal process in 7 AAC 130.220 that allows for sanctions or decertification for noncompliance.

The transition plan timeline should include an item to reassess compliance of settings one year following adoption of the new regulations.

Reassessment of compliance with settings requirements will be on-going, primarily through the provider certification process. Providers are required to perform an assessment of their operations annually as a quality assurance measure, and submit a report based on findings when applying for recertification. In addition, concerned parties can raise the issue of non-compliance by contacting SDS at any time, or through a complaint or critical incident reporting process.

Quality management standards are specified in the *Provider Conditions of Participation*. SDS will revise these standards to require provider assessment of its settings to ensure compliance.

The state should create definitions and standards for what it means to have “the same degree of access as individuals not receiving Medicaid home and community-based services”.

SDS does not believe the phrase needs to be defined. SDS plans to integrate federal definitions and concepts regarding degree of access in standards contained in the *Conditions of Participation* and in training courses for providers.

Current state regulations that allow assisted living homes to have house rules restrict recipients’ rights.

Assisted living homes and foster homes are regulated by other divisions of the department using regulations specific to licensing and the facility type. SDS can implement changes for home and community-based services recipients, but organizationally, SDS is not in a position to require changes in licensing or facility regulations. SDS will work with the state offices that regulate assisted living homes and foster homes to eliminate regulations that appear to restrict recipient rights.

SDS should institute a system for monitoring and quality assurance to ensure continuing compliance regarding settings.

SDS quality assurance processes currently in place are sufficient to monitor providers regarding on-going compliance with settings requirements.

Transition Plan Version 2

The State received comments regarding the revised state transition plan from three stakeholders. Those comments (in bolded text) are addressed in this section.

Settings review questions must take assisted living home and foster home regulations into consideration.

Assisted living home regulations regarding house rules need to be amended to rectify discrepancies between personal freedoms and house rules.

SDS is aware that some regulations for assisted living homes and foster homes will mean those facilities may not comply with federal settings requirements. SDS can implement changes for home and community-based services recipients, but organizationally, SDS is not in a position to require changes in licensing or facility regulations. SDS will work with the state offices that regulate assisted living homes and foster homes to revise regulations that are not consistent with settings requirements.

Careful assessment is needed in the review of “possibly isolating settings” because providers that fall into this category offer community integration opportunities that center around the needs and interests of people with disabilities.

SDS recognizes that recipient choice is a factor in measuring the extent of an individual’s community integration; however, providers must demonstrate that they support full access to community activities that are available to individuals not receiving home and community-based services. SDS will work with any provider to bring it into compliance so that it is not considered to be a “possibly isolating setting”. See pages 12-15.

The emphasis on integrated employment could mean job loss for currently employed individuals with disabilities.

SDS does not see the settings requirements as intended to cause job loss for recipients. SDS will work with supported employment providers to bring them into compliance to avoid such an eventuality. See pages 12-15.

The transition plan does not describe in detail what remediation efforts would be for day habilitation and supported employment settings, and how the success of these efforts will be measured.

Remediation plans for those settings will depend on the requirements that are not met by individual providers. Until that is known, SDS cannot provide details for remediation. SDS will provide technical assistance for providers that are required to develop and implement remediation plans. See pages 12-15.

SDS should develop regulations for home and community-based settings similar to those of assisted living homes regarding residents' plans, general environmental requirements, and residential contracts.

SDS believes this is a good suggestion insofar as it relates to settings, and will incorporate assisted living home requirements that are pertinent for a specified home and community-based service into the *Conditions of Participation* for that service.

SDS should specify the details of the process for relocating recipients who are receiving services in settings that are determined not to meet the settings requirements.

SDS has amended the Transition Plan to include an explanation of the process that will be followed when a recipient has to change providers due to a provider's setting not meeting the settings requirements. See page 13.

Documentation of the state public notice process is attached as Appendix D.

Appendix A
Review of Statute and Regulation

Review of Statute and Regulation

Purpose

The purpose of this evaluation was to

- review the extent to which state materials address the concepts regarding settings that are specified in the new federal requirements
- determine whether amending state materials would be sufficient or whether new state regulations would need to be enacted

Review

SDS reviewed state statutes, regulations, and policies pertinent to home and community-based waiver services; assisted living home and foster home statutes, regulations, and policies; and the SDS *Conditions of Participation*. In view of state ownership and administration of the Alaska Pioneer Homes (APH) that are licensed as assisted living homes, SDS reviewed APH policies and other written materials that address settings requirements.

Residential habilitation services (group home) and residential supported living services are provided in licensed assisted living homes; residential habilitation services (family habilitation) are provided in either licensed assisted living homes or licensed foster homes. Providers of those services must comply with licensed assisted living home regulations and licensed foster home regulations. Day habilitation services, adult day services, and meal services (congregate) are facility-based while supported employment services are provided at an employment site. Those sites and facilities must comply with SDS regulations and *Conditions of Participation*

Conclusion

While the table shows some commonalities regarding settings requirements and the SDS *Conditions of Participation* can be amended to include a number of points as indicated, SDS finds that the better approach to achieving provider compliance would be to write new settings regulations to supplement the current provider certification requirements.

Because SDS does not have administrative responsibilities for assisted living homes or foster homes, SDS will work with the Division of Health Care Services, the Alaska Pioneer Homes, and the Office of Children's Services that do have responsibility to ensure those settings have the qualities required of home and community-based settings.

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Federal regulations	State regulations/COPs	Additions/changes needed	Comment
<p>42 CFR 441.301 (c)(4)(i) Settings must be integrated in and support full access by recipients [to the greater community to the same degree of access as individuals not receiving HCB services], including</p>			<p>6/20/14 CMS clarified that this is a values statement, the purpose of which is to ensure equal treatment for all recipients as members of the community.</p>
<p>opportunities to seek employment and work in competitive integrated settings</p>	<p>No references in HCBS regulations or COPs regarding settings for adult day, day habilitation, residential habilitation, or residential supported living, or in provider COP or CC COP.</p> <p>7 AAC 130.270 Supported Employment (b)(2) Services available to provide support at worksite where individuals without disabilities are employed</p> <p>Supported employment COP: “Supported employment services may be offered in a variety of settings, but, because independence and community integration are significant goals for these services, they may not be provided in sheltered workshops or similar specialized vocational facilities.”</p>	<p>New regulation 7 AAC 130.xxx Recipient services. Include provision that providers must ensure in all settings that staff will support recipients that chose to seek employment and work in competitive, integrated settings.</p>	<p>6/20/14 CMS clarified that the aim of this regulation is to support the efforts of recipients who wish to work; recipients must have freedom to, and support from providers to, seek employment in the community, even though not receiving supported employment services.</p>

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Federal regulations	State regulations/COPs	Additions/changes needed	Comment
	<p>OCS FH Handbook. Employment may be appropriate if recipient (teen) wants to work; must be paid at same rate as other employees performing same duties if employed by business owned or operated by FH adults.</p>		
engage in community life	<p>No references in COPS regarding settings for adult day, day habilitation, supported employment, residential habilitation, or residential supported living, or in provider COP.</p> <p>SDS Service Principles: Individuals have knowledge of and access to community services. Services are designed and delivered to build communities where all members are included, respected, and valued.</p> <p>7 AAC 130.217 (a)(3)(C) [Written POC] identifies family and community supports available to recipient.</p> <p>CC COP IV.A. [CC services must] enable the recipient to remain in</p>	<p>New regulation 7 AAC 130.xxx Recipient services. Include provision that providers must ensure in all settings that staff will encourage and facilitate recipient participation in community life.</p>	

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Federal regulations	State regulations/COPs	Additions/changes needed	Comment
	<p>the most appropriate environment in the home or community, and build and strengthen family and community supports.</p> <p><u>ALH AS 47.33.230 (a)</u> [Resident's plan must] (1) promote participation in the community AKPH brochure "A Matter of Rights". [Resident has right to] participate in and benefit from community services and activities to achieve the highest level of independence, autonomy, and interaction in the community.</p> <p><u>FH (Foster home) 7 AAC 56.310 (a)(7)</u> [Child receiving services has the following right] opportunity to participate in community functions and recreational activities and to have the child's social needs met OCS FH Handbook. Important for recipient to participate in recreational, school, religious, and community activities; FH should encourage recipient to participate in activities that are appropriate and safe</p>		

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Federal regulations	State regulations/COPs	Additions/changes needed	Comment
control personal resources	<p>No references in HCBS regulations or COPs regarding settings for adult day, day habilitation, supported employment, residential habilitation, or residential supported living, or in provider COP.</p> <p><u>ALH AS 47.33.300 (a)(7)</u> [Res has right to] manage the resident's own money.</p> <p>AKPH P&P No. 01.04 [Res has right] to manage the resident's own money and finances.</p> <p><u>FH 7 AAC 50.430 (f)</u> [Money earned/received by child is personal property] No member of FH may borrow or spend money acquired by foster child</p> <p><u>(g)</u> [FH may limit amount of money child may possess or have unencumbered access if in child's best interest]</p> <p>OCS FH Handbook. Money earned by recipient is personal property; if over \$200 should have savings account; spending habits may be guided; not FH may borrow or spend recipient's money</p>	<p>New regulation 7 AAC 130.xxx Recipient services. Include provision that providers must ensure in all settings that staff will facilitate recipient control of personal resources.</p> <p>Revise Provider COP III.C. Recipient rights. [Provider must] support recipient control of personal resources.</p> <p>Revise CC COP IV.B 2. POC Development to address control of personal resources as an action to be considered by planning team.</p>	

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Federal regulations	State regulations/COPs	Additions/changes needed	Comment
<p>receive services in the community</p>	<p>No references in HCBS regulations or COPS regarding settings for adult day, day habilitation, supported employment, residential habilitation, or residential supported living, or in provider COP.</p> <p>SDS Service Principles: Individuals have knowledge of and access to community services</p> <p>7 AAC 130.217 (a)(3)(C) [Written POC] identifies family and community supports available to recipient.</p> <p><u>ALH AS 47.33.300 (a)</u> [Res has right to] (12) [access health care providers of resident's choosing in community] AKPH brochure "A Matter of Rights". [Resident has right to] participate in and benefit from community services . . . [including] access to adequate and appropriate health care and health care providers of the resident's own choosing . . .</p>	<p>New regulation 7 AAC 130.xxx Recipient services. Include provision that providers must ensure in all settings that staff ensure that recipients receive services in the community.</p>	<p><i>The meaning of this seems unclear as the premise of home and community-based waiver services is receipt of services in the community.</i></p>

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Federal regulations	State regulations/COPs	Additions/changes needed	Comment
	FH 7 AAC 56.310 (a)(6) [Child receiving services has the following right] appropriate health care		
42 CFR 441.301 (c)(4)(ii) The setting is selected by the recipient from among setting options including			
non-disability specific settings	<p>No references in HCBS regulations or COPs regarding adult day, day habilitation, supported employment, residential habilitation, or residential supported living, or in provider COP.</p> <p>7 AAC 130.217 (a)(3)(C) [Written POC] identifies family and community supports available to recipient.</p> <p>CC COP IV.B.1.b. [CC must] provide information about service options for medical, social, educational, and other services</p>	<p>Revise CC COP IV.B.1.b. to read, provide information about options, <u>including those available in non-disability specific settings</u>, <i>i.</i> for medical, social, educational, and other services; and <i>ii.</i> for residential services, if such <u>services are of interest to or appropriate for the recipient; residential options must take into consideration the recipient's resources for room and board, and whether those resources would cover the cost of a private unit in the recipient's chosen residential setting.</u></p>	
option for a private unit in a residential setting	<p>No references in HCBS regulations or COPS regarding settings for residential habilitation, or residential supported living, or in provider COP.</p>	<p>Revise CC COP IV.B.1.b. to read, “provide information about options, <u>including those available in non-disability specific settings</u>, <i>i.</i> for medical, social, educational,</p>	<p><i>CMS clarified that settings do not have to have private units, but that the recipient must be given the choice of a private unit from among all residential settings that</i></p>

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Federal regulations	State regulations/COPs	Additions/changes needed	Comment
		and other services”; and <u>ii. for residential services, if such services are of interest to or appropriate for the recipient; residential options must take into consideration the recipient’s resources for room and board, and whether those resources would cover the cost of a private unit in the recipient’s chosen residential setting.</u>	<i>are available.</i>
options documented in service plan	7 AAC 130.217 (a)(3) [Written POC] (B) identifies providers available to render services (E)(1) identifies for each service, the provider that has agreed to provide the service.	Revise 7 AAC 130.217 (a)(3)(B) to read, “identifies the providers ... that <u>were considered and the providers that were selected</u> , to render services to the recipient”. Revise POC form to include section re settings: ~confirm residence choice by recipient ~identify any modifications; justify as required by regulations	<i>6/5/14 CMS clarified that all settings considered, and why they were not chosen, must be documented in POC.</i>
options based on needs and preferences	7 AAC 130.213 (a)(2) [The dept. will assess] physical, emotional, and cognitive functioning to determine LOC 7 AAC 130.217 (a)(3)(F) [services must be consistent with		

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Federal regulations	State regulations/COPs	Additions/changes needed	Comment
	<p>assessment/LOC]</p> <p>CC COP IV. B. 2. b. [Planning team provides opportunity for recipient/family] i. to express outcomes they wish to achieve; ii. to request services that meet identified need; iii. to explain how they would prefer that the services be delivered.</p> <p>CC COP IV. B. 3. a. the planning team must incorporate [assessment findings] in POC</p> <p>POC Section III. “The individualized service-planning process offers the recipient the opportunity to identify personal goal(s).”</p>	<p>Revise CC COP IV. B. 2. B. i. to read, “to express outcomes they wish to achieve <u>and preferences regarding services</u>”</p>	
residential setting options based on resources for room and board	<p>No references in HCBS regulations or COPS regarding settings for residential habilitation, or residential supported living, or in provider COP.</p>	<p>Revise CC COP IV.B.1.b. to read, “provide information about options, <u>including those available in non-disability specific settings,</u> i. for medical, social, educational, and other services”; and ii. <u>for residential services, if such services are of interest to or appropriate for the recipient; residential options must take into consideration the recipient’s</u></p>	

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Federal regulations	State regulations/COPs	Additions/changes needed	Comment
		<u>resources for room and board, and whether those resources would cover the cost of a private unit in the recipient's chosen residential setting.</u>	
42 CFR 441.301 (c)(4)(iii) Settings must ensure an individual's rights to privacy, dignity, and respect, and freedom from coercion and restraint			
privacy	<p>No references in HCBS regulations or COPs regarding adult day, day habilitation, supported employment, residential habilitation, or residential supported living, or in provider COP.</p> <p><u>ALH AS 47.33.300 (2)</u> [ALH resident] has the right to . . . privacy in [health-related circumstances, resident's room, bathing and toileting, personal possessions]. AKPH P&P No. 01.04 [Restates AS 47.33.300 92)].</p> <p>7 AAC 75.260 (a)(5) [ALH shall ensure resident has] reasonable privacy when sharing a room.</p> <p><u>FH 7 AAC 50.530(d)</u> [Requirements for space in</p>	<p>New regulation 7 AAC 130.xxx Recipient services. Include provision that providers must ensure in all settings that staff will accord to recipients the right to privacy.</p>	

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Federal regulations	State regulations/COPs	Additions/changes needed	Comment
	bedrooms.] OCS FH Handbook. [FH] must provide sleeping space appropriate for age of child, and similar to that of other household members		
dignity and respect	<p>No references in HCBS regulations or COPs regarding adult day, day habilitation, supported employment, residential habilitation, or residential supported living</p> <p>SDS Mission statement and service principles, CC COP and Provider COP apply to all settings, including adult day, day habilitation, assisted living homes, foster homes, and supported employment.</p> <p>SDS Mission: [SDS facilitates access to services/supports] that foster independence, personal choice, and dignity.</p> <p>SDS Service Principles: Individuals . . . are treated with respect, dignity, and compassion.</p> <p>CC COP IV. A. 4. The provider must operate its CC services program for the following</p>	New regulation 7 AAC 130.xxx Recipient services. Include provision that providers must ensure in all settings that staff will accord to recipients the right to dignity and respect.	

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Federal regulations	State regulations/COPs	Additions/changes needed	Comment
	<p>purposes: To treat the recipients with dignity and respect in the provisions of services.</p> <p>Provider COP III. C. 1. The provider must treat all recipients respectfully. Applicable to all settings, including adult day, day habilitation, assisted living homes, foster homes, and supported employment.</p> <p><u>Persons with disabilities</u> AS 47.80.110 (2) . . . service providers shall ensure each[person with disabilities] has right to confidentiality and treatment with dignity</p> <p><u>ALH AS 47.33.300 (2)</u> [ALH resident] has the right to be treated with consideration and respect for personal dignity, individuality, and the need for privacy . . . AKPH P&P No. 01.04 [Restates AS 47.33.300 92)].</p> <p><u>FH 7 AAC 50.430 (b)</u> A foster parent shall recognize, encourage, and support the religious beliefs, ethnic and cultural heritage, and language of a child's birth parents,</p>		

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Federal regulations	State regulations/COPs	Additions/changes needed	Comment
	<p>and shall respect the expressed religious preference of the birth parents of their child. However, the foster parent shall respect the preference of a foster child nine years of age or older.</p> <p>(d) A foster parent shall treat foster children equitably with the foster parent's own children.</p>		
freedom from coercion/restraint	<p>SDS service principles and 7 AAC 130.229 apply to all settings, including adult day, day habilitation, assisted living homes, foster homes, and supported employment.</p> <p>SDS Service Principles: Individuals a right to choice and self-determination . . . Individuals are safe and served in the least restrictive manner.</p> <p><u>Persons with disabilities</u> AS 47.80.110 (6) . . . service providers shall provide services in the least restrictive setting . . .</p> <p>7 AAC 130.229. Specifies limited circumstances for use of restrictive intervention.</p>	<p>New regulation 7 AAC 130.xxx Recipient services. Include provision that providers must ensure in all settings that staff will accord to recipients freedom from coercion and restraint.</p>	

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Federal regulations	State regulations/COPs	Additions/changes needed	Comment
	<p>7 AAC 130.255 (d) A provider of residential supported living services under this section may not compel a recipient to be absent from an assisted living home for the convenience of the provider.</p> <p>7 AAC 130.265 (j) A provider of residential habilitation services under this section may not compel a recipient to be absent from an assisted living home, foster home, or group home for the convenience of the provider.</p> <p><u>ALH</u> 7 AAC 75.220 (a) [ALH shall provide safeguards to ensure that no person abuses, neglects, or exploits a resident.]</p> <p>7 AAC 75.295 (a) [ALH] must have a written procedure regarding the use of physical restraint [approved by the department]. AKPH P&P No. 04.09 [limits the use of restraints]; P&P No. 06.01 [addresses resident abuse]</p> <p><u>FH</u> 7 AAC 50.435 (b) [To guide behavior, FH] shall provide positive enforcement, redirection, and the setting of realistic expectations and clear and</p>		

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Federal regulations	State regulations/COPs	Additions/changes needed	Comment
	<p>consistent limits.</p> <p>(c) [FH] may not use discipline or a behavior management technique that is cruel, humiliating, or otherwise damaging to the child.</p> <p>(d) - (j) [List of prohibited practices, including restraint and isolation (except under limited circumstances)]</p> <p>OCS FH Handbook. [FH] barred from specific types of discipline, including corporal punishment, isolation, physical restraints, and verbal abuse</p>		
42 CFR 441.301 (c)(4)(iv) Settings must optimize recipient initiative, autonomy, and independence in making life choices, including			
daily activities	<p>No references in HCBS regulations or COPs regarding residential habilitation, supported employment, or in provider COP.</p> <p>SDS Service Principles: Individuals a right to choice and self-determination . . .</p> <p>Adult Day COP III.D.1. The provider must offer services and activities that b. are varied . . .to meet the interests of the recipients;</p>	<p>New regulation 7 AAC 130.xxx Recipient services. Include provision that providers must ensure in all settings that staff will optimize recipient initiative, autonomy, and independence in making life choices.</p> <p>Revise Residential Habilitation COP; new section III. . The provider must offer services and activities that b. are varied . . .to meet the</p>	<p><i>Choice of daily activities does not seem germane to supported employment since the objective in that service is to do the work required for employment.</i></p>

HCB Final Rule setting requirements/Alaska regulations evaluation

Federal regulations	State regulations/COPs	Additions/changes needed	Comment
	<p>d. are planned jointly by staff and recipients.</p> <p>Day habilitation COP II.1. The provider must offer services and activities that</p> <p>b. are varied . . .to meet the interests of the recipients;</p> <p>e. are planned jointly by staff and recipients.</p> <p>Residential supported-living COP. II.C. The provider must accord to recipients a full range of activities ordinarily available in a home ...</p> <p><u>ALH AS 47.33.230 (a)</u> [Resident's plan must]</p> <p>(1) promote participation in the community and increased independence through training and support ...</p> <p>(2) [recognize the right of the resident to evaluate and choose ... when making decisions re abilities, preferences, and service needs]</p> <p>(b) [Resident's plan must describe]</p> <p>(3) resident's preferences in ... recreational activities, religious affiliation</p> <p>(4) – (5) [ADLs needing assistance</p>	<p>interests of the recipients;</p> <p>d. are planned jointly by staff and recipients.</p> <p>Revise Residential Supported-Living COP II.C; add: [The provider must] offer services and activities that are varied . . .to meet the interests of the recipients.</p>	

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Federal regulations	State regulations/COPs	Additions/changes needed	Comment
	<p>and how assistance will be provided]</p> <p>FH 7 AAC 50.430 (c) [FH to provide structure and daily activities designed to promote development and health of child]</p> <p>7 AAC 56.310 (a)(4) [Child receiving services has the following right: placement and supervision in the least restrictive setting capable of meeting the child's needs ...]</p> <p>OCS FH Handbook. [FH] must ensure recipient attends school; should foster participation in social activities; may assign chores similar to those expected of family members of the same age;</p>		
physical environment	<p>No references in HCBS regulations or COPs regarding residential habilitation, residential supported living, or supported employment, or in provider COP.</p> <p>Adult Day COP IV Site requirements.</p> <p>Day habilitation COP III. Site requirements.</p>	<p>New regulation 7 AAC 130.xxx Recipient services. Include provision that providers must ensure in all settings that staff will optimize recipient initiative, autonomy, and independence in making life choices [regarding furnishing and decorating the recipient's unit?].</p>	<p><i>6/5/14 CMS clarified that this means the physical settings must meet recipient needs by being accessible for that recipient and not regimented (e.g., recipient may make choices re furnishings and décor).</i></p> <p><i>It is unclear how this would apply in a setting other than residential setting when CMS limited its</i></p>

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Federal regulations	State regulations/COPs	Additions/changes needed	Comment
	<p>ALH AS 47.33.300 (a)(10) [Res has right to reasonable opportunity to exercise and to go outdoors, when weather permits.] AKPH P&P 01.04 restates right.</p> <p>7 AAC 260 (a)(1) [ALH must ensure resident has room furniture similar to that of homes in community and neighborhood]; furniture may be provided by the resident</p> <p>FH 7 AAC 50.530 (a) [FH must have indoor and outdoor space to accommodate physical/developmental needs of child]</p> <p>7 AAC 50.540 (a) [FH] must select equipment and supplies so that amount, variety, arrangement and use are appropriate for developmental needs of child</p>		<p><i>clarification to choices regarding furnishings and décor.</i></p>
with whom to interact	<p>No references in HCBS regulations or COPs regarding residential habilitation or residential supported living, or supported employment or in provider COP.</p> <p>SDS Service Principles:</p>	<p>New regulation 7 AAC 130.xxx Recipient services. Include provision that providers must ensure in all settings the recipient's right to choose with whom to interact.</p>	

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Federal regulations	State regulations/COPs	Additions/changes needed	Comment
	<p>Individuals a right to choice and self-determination . . .</p> <p>Adult Day COP III.D.1. The provider must offer services and activities that</p> <p>b. are varied . . .to meet the interests of the recipients and to promote participation in both individual and group activities;</p> <p>d. are planned jointly by staff and recipients.</p> <p>Day habilitation COP II.1. The provider must offer services and activities that</p> <p>b. are varied . . .to meet the interests of the recipients and to promote participation in both individual and group activities;</p> <p>e. are planned jointly by staff and recipients.</p> <p><u>ALH AS 47.33.230 (b)(3)</u> [Resident's plan must describe] resident's preferences in ... relationships and visitation with friends, family members, and others</p> <p><u>FH 7 AAC 56.310 (a))(4)</u> [Child receiving services has the</p>		

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Federal regulations	State regulations/COPs	Additions/changes needed	Comment
	<p>following right: placement and supervision] in the least restrictive setting ... considering siblings, extended family, and other relationships</p> <p>(b) [Child must have opportunity for sibling visits and contact, and visits with extended family]</p> <p>OCS FH Handbook. [FH] dating is normal part of adolescence; FH may guide re safe dating practices, and set rules and boundaries for dating.</p>		
42 CFR 441.301 (c)(4)(v) The setting facilitates individual choice regarding			
services and supports	<p>No references in HCBS regulations or COPs regarding adult day, day habilitation, residential habilitation, residential supported living or supported employment.</p> <p>SDS Vision: Choice, safety, independence, and dignity in home and community-based living.</p> <p>SDS Service Principles: Individuals a right to choice and self-determination . . . Individuals have knowledge of and access to community services.</p>	<p>New regulation 7 AAC 130.xxx Recipient services. Include provision that providers must ensure in all settings that staff will facilitate recipient choice regarding services and supports, and the individuals that will provide them.</p> <p>Provider COP III.C.3. The</p>	

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Federal regulations	State regulations/COPs	Additions/changes needed	Comment
	<p>Provider COP III.C.3. The provider must cooperate with recipients who elect to change service providers.</p> <p>CC COP IV. B. 1. c. [The CC must] affirm the recipient's right to choose to receive services from any qualified provider . . .</p> <p>CC COP IV. B. 2. b. [The CC must provide an opportunity for the recipient and family] to request services that meet identified needs, and to explain how they would prefer that the services be delivered.</p> <p><u>ALH AS 47.33.300 (6)</u> [ALH resident] has the right to . . . participate in and benefit from community services and activities</p>	<p>provider must cooperate with recipients who elect to change <u>care coordinators, provider agencies, services and supports, or the direct care workers who provide those services and supports.</u></p>	
who provides services/supports	<p>SDS Service Principles: Quality services are provided by competent trained caregivers who are chosen by individuals and their families.</p> <p>Provider COP III. C. 3. The provider must cooperate with recipients who elect to change service providers.</p>	<p>New regulation 7 AAC 130.xxx Recipient services. Include provision that providers must ensure in all settings that staff will facilitate recipient choice regarding services and supports, and the individuals that will provide them.</p> <p>Provider COP III.C.3. The</p>	

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Federal regulations	State regulations/COPs	Additions/changes needed	Comment
	<p>CC COP IV. B. 1. C. The CC must affirm the recipient's right to choose to receive services from any qualified provider.</p> <p><u>ALH AS 47.33.300 (12)</u> [ALH resident] has the right to . . .have access to adequate and appropriate health care and health care providers of the resident's own choosing . . .</p> <p>AKPH P&P No. 01.04 restates right.</p>	<p>provider must cooperate with recipients who elect to change <u>care coordinators, provider agencies, services and supports, or the direct care workers who provide those services and supports.</u></p>	
42 CFR 441.301 (c)(4)(vi) [Applies to provider-owned or -controlled settings]			
<p><i>Note: HCBS regulations require that residential services (residential habilitation services and residential supported living services) be provided in settings that are licensed as assisted living homes or foster homes. The assisted living home regulations and foster home regulations cited apply to these settings.</i></p> <p>7 AAC 130.255 (a)(5) The department will pay for residential supported-living services that are provided in an assisted living home licensed under AS 47.32.</p> <p>7 AAC 130.265 (b)(1)(A) The department will consider residential habilitation services to be family home habilitation services if the family home habilitation services site is a residence licensed as an assisted living home or a foster home under AS 47.32.</p> <p>7 AAC 130.265 (f) The department will consider residential habilitation services to be group home habilitation services if those services are provided . . . in a residence licensed as an assisted living home . . . under AS 47.32.</p>			
42 CFR 441.301 (c)(4)(vi) (A) The unit or dwelling is a specific physical place that can be owned, rented, or occupied			
under a legally enforceable	<u>ALH AS 47.33.210 (a)</u>	New regulation 7 AAC 130.xxx	AS 34.03.010 – 34.03.260

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Federal regulations	State regulations/COPs	Additions/changes needed	Comment
agreement similar to landlord/tenant law of jurisdiction	<p>[Residential services contract required for residency] AKPH No. 03.03 Services are . . . defined in the assisted living contract; signed by the recipient or recipient resident;</p> <p><u>FH</u> 7 AAC 50.300 (f) [A facility must have an agreement signed by the parties that includes or attaches the following: (17 item list)] 7 AAC 56.500 [For FH placements, agency shall develop a placement agreement; can combine agreement with FH agreement required by 7 AAC 50.300 (f)]</p>	<p>Recipient services. Include provision that, in addition to meeting the settings requirements in (x), providers that own or control residential settings must provide to each recipient a written, legally enforceable agreement regarding the terms of recipient tenancy signed by both parties; the terms must address</p> <ol style="list-style-type: none"> 1. recipient responsibilities; 2. termination of services; [3. recipient rights regarding privacy, visitors, roommates, furnishing and decorating the recipient's unit] 	<p>Landlord/Tenant Act applicable to rental of a residence.</p>
agreement must address recipient responsibilities	<p><u>ALH</u> AS 47.33.210 (b)(3) [must specify rights, duties, and obligations of resident] AKPH No. 03.03 Services are . . . defined in the assisted living contract; includes description of the rights, duties, and obligations of the resident.</p> <p><u>FH</u> 7 AAC 56.300 (a) [Agency shall provide] a written statement or pamphlet indicating client and agency rights and responsibilities 7 AAC 56.500 (b)(4) [Agreement</p>		<p>AS 43.03.20 Rental agreement may be written or verbal; may include conditions not prohibited by L/T Act or by law. 43.03.120 Tenant obligations</p>

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Federal regulations	State regulations/COPs	Additions/changes needed	Comment
	must include delineation of the respective roles and responsibilities of all parties ...]		
agreement must address recipient protections from eviction	<p>HCBS 7 AAC 130.223 [30 days before action taken], a provider shall send written notice of service termination to the department, the recipient, and the recipient's care coordinator.</p> <p>ALH AS 47.33.210 (b)(4) [Residential services contract must set out policies/procedures for termination of contract] AS 47.33.360 [No termination except for stated reasons; notice required; resident right to contest termination] AKPH No. 03.03 Services are . . . defined in the assisted living contract; includes policy for termination of the contract.</p> <p>FH 7 AAC 56.300 (b) [Agency written statement or pamphlet must have a written appeal process for clients]</p>		<p>L/T Act uses “termination of tenancy” (eviction refers to court order when tenant refuses to move) AS 34.03.220 [Landlord remedies] Noncompliance with rental agreement AS 34.03.290 [Termination requires notice to tenant] AS 34.03.310 Retaliatory conduct prohibited</p>
42 CFR 441.301 (c)(4)(vi)(B) Each recipient must have privacy in his/her sleeping or living unit in settings where HCB services are provided.			

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Federal regulations	State regulations/COPs	Additions/changes needed	Comment
privacy in unit	<p><u>ALH</u> AS 47.33.300 (a) [Res has right to] (2)(B) [privacy in the resident's room or portion of a room]; (2)(D) the maintenance of personal possessions and the right to keep at least one cabinet or drawer locked (5) close the door of the resident's room at any time. AKPH P&P No. 01.04 [Restates AS 47.33.300.]</p> <p>AS 47.33.330 (a)(2) [Staff may not enter resident's room without first obtaining permission except for health or safety reasons]</p> <p><u>FH</u> No reference</p>	<p>New regulation 7 AAC 130.xxx Recipient services. Include provision that, in addition to meeting the settings requirements in (x), providers that own or control residential settings must provide for privacy in a recipient's living or sleeping unit [by making entrance doors lockable, limiting staff access to keys, allowing roommate choice, specifying freedom to furnish/decorate]; the provider must explain to the recipient any circumstances that would limit the provider's ability to provide for privacy, and obtain the recipient's consent go live in the residential setting with those limits.</p>	<p>The details regarding privacy requirements might be better placed in the <i>Provider Conditions of Participation</i> under III.C. Recipient rights. [In provider-owned or -controlled residential settings the provider must</p> <ol style="list-style-type: none"> 1. make the entrance doors to the recipient's sleeping or living unit lockable by the recipient 2. determine with the recipient the purposes for which staff will be allowed to enter the unit; 3. implement a system to limit access to unit keys to the appropriate staff.
unit entrance doors lockable by the recipient	<p><u>ALH</u> No reference AKPH P&P No. 01.05. Home entrance doors are locked for security reasons after visiting times. Special accommodations can be made to allow visitor access to the home after the doors are locked.</p> <p><u>FH</u> No reference</p>	<p>New regulation 7 AAC 130.xxx Recipient services. Include provision that, in addition to meeting the settings requirements in (x), providers that own or control residential settings must provide for privacy in a recipient's living or sleeping unit [by making entrance doors lockable]</p>	

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Federal regulations	State regulations/COPs	Additions/changes needed	Comment
only appropriate staff having keys to the unit entrance doors	<u>ALH</u> No reference <u>FH</u> No reference	New regulation 7 AAC 130.xxx Recipient services. Include provision that, in addition to meeting the settings requirements in (x), providers that own or control residential settings must provide for privacy in a recipient's living or sleeping unit [by limiting staff access to keys to unit entrance doors]	
choice of roommates	<u>ALH</u> AS 47.33.230 (b)(3) [Resident's plan must describe] preference in roommates AKPH P&P No. 03.03. Assignment of residence rooms in the homes is based on the assessment of medical, physical, and behavioral issues, and gender of the resident. Private rooms are assigned by assessed need, not seniority. [Those] assigned to a private room are not assured that they will remain in a private room. <u>FH</u> No reference	New regulation 7 AAC 130.xxx Recipient services. Include provision that, in addition to meeting the settings requirements in (x), providers that own or control residential settings must provide for privacy in a recipient's living or sleeping unit [by accommodating the recipient a choice of roommates in shared units when possible; the provider must explain to the recipient any circumstances that would limit such choice and obtain the recipient's consent to such limitation.	<i>8/31/15 Alaska Pioneer Homes have a waiting list numbering in the thousands. Admission is on a first come, first serve basis. The average age of residents is 85 years. Given the nature of the Homes, it does not seem possible that a recipient will have a choice of roommates, but it does appear that the recipient can express a preference and will be accommodated insofar as possible.</i>
freedom to furnish and decorate	<u>ALH</u> 7 AAC 260 (a)(1) [ALH	New regulation 7 AAC 130.xxx	<i>6/5/14 CMS clarified that this</i>

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Federal regulations	State regulations/COPs	Additions/changes needed	Comment
units within the lease/agreement	<p>must ensure resident has room furniture similar to that of homes in community and neighborhood]; furniture may be provided by the resident</p> <p><u>FH</u> No reference to decorating 7 AAC 50.430 (h) [FH must allow child] to bring and acquire personal belongings</p>	<p>Recipient services. Include provision that, in addition to meeting the settings requirements in (x), providers that own or control residential settings must provide for privacy in a recipient's living or sleeping unit [by outlining the provider's guidelines regarding furnishing and decorating the recipient's unit].</p>	<p><i>means the provider must have a reasonable standard re décor, i.e., allow personal décor to the same extent allowed for those not receiving HCB services.</i></p> <p>This provision might be a better fit in the regulation about agreements. New regulation 7 AAC 130.xxx The terms [of the legally-enforceable agreement] must address guidelines for furnishing and decorating the unit by the recipient.</p>
42 CFR 441.301 (c)(4)(vi)(C) Recipients must have			
freedom/ support to control own schedules and activities	<p>[ALH] AS 47.33.060 (c) [House rules may address telephone use, hours/volume for TV/radio, visitors, movement in and out of home]</p> <p>(d) [ALH may not adopt a house rule that unreasonably restricts a right of a resident. AKPH P&P No. 01.01. [Homes follow a] resident-centered care philosophy by honoring resident's life experiences, choices, routines, and the spontaneity of daily life.</p>	<p>New regulation 7 AAC 130.xxx Recipient services. Include provision that, in addition to meeting the settings requirements in (x), providers that own or control residential settings must accord to a recipient the freedom and support needed to control the recipient's schedule and activities.</p>	

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Federal regulations	State regulations/COPs	Additions/changes needed	Comment
	<p><u>FH 7 AAC 50.430 (d)</u> [Foster child to be treated equitably with foster parent's own children]</p> <p><u>7 AAC 50.440 (a)</u> [Child must receive responsible supervision appropriate to age and developmental needs]</p>		
access to food at all times	<p><u>ALH 7 AAC.265 (a)</u> [ALH must offer three meals and at least one snack daily]</p> <p>AKPH Brochure "A Matter of Rights. [Residents may have microwave oven, pots for heating water, and small refrigerators in their rooms.]</p> <p><u>FH 7 AAC 50.460 (a)</u> [FH] shall ensure that all snacks and meals meet child care food program requirements of 7 CFR 226.20 [Minimum meal requirements]</p> <p>(g) [FH] may not deny a meal or snack to a child.</p> <p>OCS FH Handbook. [FH] must provide regular, balanced meals and snacks; may not deny meals or force/coerce child to eat.</p>	<p>New regulation 7 AAC 130.xxx Recipient services. Include provision that, in addition to meeting the settings requirements in (x), providers that own or control residential settings must accord to a recipient access to food at all times.</p>	<p><i>CMS clarified that if a recipient misses a regularly scheduled meal, the nutritional equivalent must be made available at a time convenient to the recipient.</i></p> <p><i>Recipients must have access to safe storage and heating of food, e.g., microwave and refrigerator, either in the sleeping area or a common area accessible by recipients.</i></p> <p><i>Recipients must have access to snacks at any time.</i></p> <p>The details regarding access to food requirements might be better placed in the <i>Provider Conditions of Participation</i> under III.C. Recipient rights. [In provider-owned or -controlled residential settings the provider must</p> <ol style="list-style-type: none"> 1. provide access to snacks at all times; 2. safe storage and heating of foods

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Federal regulations	State regulations/COPs	Additions/changes needed	Comment
			<p>obtained by the recipient for personal use, or allow the recipient to have small appliances for storing and heating foods in the recipient's unit;</p> <p>3. provide the nutritional equivalent of a meal missed by the recipient at a time convenient to the recipient.</p>
42 CFR 441.301 (c)(4)(vi)(D) Recipients must be able to have			
visitors of their own choosing	<p>ALH AS 47.33.300 (a)(4)(C) [Res has right to visit] with persons of the resident's choice, subject to visiting hours established by the home</p> <p>AKPH Brochure "A Matter of Rights. Residents are encouraged to receive guests; children are welcome.</p> <p>FH 7 AAC 56.310 (a)(b) [Child must have opportunity for sibling visits and contact, and visits with extended family]</p>	<p>New regulation 7 AAC 130.xxx Recipient services. Include provision that, in addition to meeting the settings requirements in (x), providers that own or control residential settings must accord to a recipient that right to have visitors, chosen by the recipient, at any time; the provider must explain to the recipient any circumstances that would limit such choice, and obtain the recipient's consent to such limitation.</p>	<p>This provision might be a better fit in the regulation about agreements. New regulation 7 AAC 130.xxx The terms [of the legally-enforceable agreement] must address guidelines regarding visitors and visiting times; including the accommodations that may be made for visitors when access is limited for health and safety reasons.</p> <p>SDS will work with the office responsible assisted living homes and for the AK Pioneer Homes in regard to the settings requirement regarding visiting hours. Although allowed by statute to establish</p>
visitors at any time	<p>ALH AS 47.33.300 (a)(4)(C) [ALH may establish visiting hours]</p> <p>AKPH P&P No. 01.05 [Alaska</p>		

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Federal regulations	State regulations/COPs	Additions/changes needed	Comment
	Pioneer Homes have posted times when entrance doors are locked for security reasons; however, “in special circumstances”, accommodations may be made to allow access after doors are locked.		visiting hours, SDS believes this matter can be handled by requiring ALH policies that address the issue, with an eye to changing the statute in the future.
42 CFR 441.301 (c)(4)(vi)(E) The settings where HCB services are provided must be			
physically accessible for the recipient	<p>7 AAC 130.300 (b)(2)(A) [Dept. will pay for environmental modifications necessary to] meet the recipient needs for accessibility identified in POC.</p> <p>Adult Day COP IV.A.5. requires adaptive equipment and toilet/sink in location accessible to recipient with limited mobility</p> <p>Day Habilitation COP III.A.2. requires adaptive equipment and accessible toilet facilities</p>	<p>New regulation 7 AAC 130.xxx Recipient services. Include provision that, in addition to meeting the settings requirements in (x), providers that own or control residential settings must ensure that setting is physically accessible for the recipient.</p> <p>Revise CC COP IV.C. POC Implementation. CC must</p> <ol style="list-style-type: none"> 1. arrange services ... <u>2. confirm that settings where services are to be provided are physically accessible for the recipient</u> 3. coordinate delivery of services 4. support independence... 5. teach how to evaluate ... 	

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Federal regulations	State regulations/COPs	Additions/changes needed	Comment
42 CFR 441.301 (c)(4)(vi)(F) Any modification of the conditions [(c)(4)(vi)(A) – (D) pertaining to only provider owned or controlled residential settings] must be supported by a specific assessed need and justified in the service plan that documents			
<ul style="list-style-type: none">~specific and individualized assessed need~positive interventions and supports used prior to any modification~less intrusive methods of meeting the need tried, but did not work~condition that lead to the specific assessed need~regular collection/ review of data to measure the ongoing effectiveness~times for review of data to determine continuation/termination of modification~informed consent of the recipient~assurance of no harm to recipient resulting from modifications		<p>New regulation 7 AAC 130.xxx Recipient services. Include provision that, in addition to meeting the settings requirements in (x), providers that own or control residential settings must.</p> <p>Revise CC COP IV.B. POC; add: <u>4. Residential Setting</u> POC must</p> <ul style="list-style-type: none">~list all residential settings that were considered~ identify the residence chosen by recipient, and that it meets the settings requirements~specify that the recipient and provider have signed a written, legally enforceable agreement that meets the requirements of 7 AAC 130.xxx (x).~indicate any modifications made in accordance with 7 AAC 130.xxx (x) <p>Revise POC form, Section V Residential Service, to include residence choice by recipient, and requirements for modification</p>	

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Federal regulations	State regulations/COPs	Additions/changes needed	Comment
		made in accordance with 7 AAC 130.xxx (x)	
42 CFR 441.301 (c)(5) A location that has the qualities of an institutional setting is presumed to lack the qualities of HCB settings			
<p>~location in a building that is a publicly or privately operated facility that provides inpatient institutional treatment</p> <p>~location in a building on the grounds of, or immediately adjacent to a public institution</p> <p>~location that isolates recipients from the broader community of individuals who do not receive HCB services</p>	<p>7 AAC 130.250 Adult Day (b)(2) [Services considered to be adult day if] provided in a non-institutional community setting</p>	<p>New regulation 7 AAC 130.xxx Recipient services.</p> <p>(x) Unless otherwise approved by the department, a provider may not render home and community-based waiver services in a setting</p> <p>~ in a building that is a publicly or privately operated facility that provides inpatient institutional treatment</p> <p>~ in a building on the grounds of, or immediately adjacent to a public institution;</p> <p>~in a location that isolates recipients from the broader community.</p>	

Appendix B

Settings Qualities Checklist and Exploratory Questions for Home and Community-Based Services Settings

Senior and Disabilities Services
Setting Qualities Checklist and Exploratory Questions for
Home and Community-Based Services Settings

Setting name	
Setting address	
Services provided at setting	
Reviewer	Date
Notes:	
Qualities required for all home and community-based services setting	
<input type="checkbox"/> Not located in building/on grounds with institutional characteristics	
<ul style="list-style-type: none"> Is the setting in a publicly or privately operated facility that provides inpatient institutional treatment? Is the setting located in a building on the grounds of, or adjacent to, a public institution? 	
<input type="checkbox"/> Does not isolate recipients from broader community of individuals not receiving HCBS?	
<ul style="list-style-type: none"> Does the setting provide multiple types of services/activities on-site with consequent decrease in opportunities for recipient participation in broader community? Does the setting isolate recipients because of its nature, e.g., disability-specific farm community, gated/secured community for people with disabilities, residential school? Is the setting located in the community among private residences rather than in a business area? Does the setting operate in a manner that congregates recipients so that they live/receive services in an area separate from non-recipients? Does the setting use interventions/restrictions like those that might be used in institutional settings, or are deemed unacceptable in HCBS settings, e.g., seclusion, chemical restraints, locked doors? 	
<input type="checkbox"/> Provides opportunities and support for employment in competitive, integrated settings	
<ul style="list-style-type: none"> Do any recipients work in integrated community settings? Does the setting offer, to recipients who would like to work, information and support to ensure they are able to pursue that option? Does the setting support recipients that do work, e.g., planning services around the work schedule, prompting recipients when it is time to go to work, assuring transportation is available? 	
<input type="checkbox"/> Provides opportunities to participate in and receive services in community	

<ul style="list-style-type: none"> • Does the setting provide, or assist recipients to obtain, information on activities/services in the community? • Are recipients able to come and go at any time, e.g., for appointments, shopping, church, entertainment, dining out? • Is the setting located near a bus stop? • Are bus schedules posted in a convenient location? • Are taxis or accessible vans available to transport recipients? • Are transportation services schedules/telephone numbers posted/available? • Does the setting facilitate/train recipients in the use of public transportation? • Are recipients able to talk about activities occurring outside the setting, how they accessed those activities, and who assisted in facilitating that access?
<input type="checkbox"/> Provides opportunities for control of personal resources
<ul style="list-style-type: none"> • Do recipients have bank accounts or other means to control their money? • Does the setting facilitate/support recipients to access accounts/funds as they choose? • If recipients work, is it clear to them that they are not required to sign over paychecks to the provider?
<input type="checkbox"/> Needs/preferences considered when settings options offered
<ul style="list-style-type: none"> • Does the setting reflect the needs and preferences of each recipient? • Do recipients express satisfaction regarding the setting?
<input type="checkbox"/> Offers choice of receiving services in non-disability specific settings
<ul style="list-style-type: none"> • If recipients choose to change providers, are they given the option of receiving services in non-disability specific settings?
<input type="checkbox"/> Process for protecting recipients' rights to privacy, dignity, and respect
<ul style="list-style-type: none"> • Is health information kept private, e.g., schedules/information regarding meds, diet, PT/OT are not posted in open area for all to view? • Do staff refrain from discussing recipient health information within hearing distance of others who do not have a need to know? • Do recipients have/have access to telephones or other electronic devices to use for personal communication in private and at any time? • Are communal telephones/computers located so that privacy in communication is ensured? • Do staff/recipients knock and receive permission to enter prior to entering a sleeping/living unit or bathroom? • Does the setting provide assistance with grooming/hygiene as needed? • Are recipients dressed in clothes that fit, are clean, are to their liking, and are appropriate for the time of day/season/weather? • Do staff converse with recipients while providing assistance and during the course of daily activities? • Do staff address recipients as individuals in the manner in which they would like to be addressed as opposed to addressing them with generic terms such as "hon" or "sweetie"? • Do staff talk about a recipient in his/her presence as though the recipient was not present or within hearing distance? • Are there cameras monitoring the setting?
<input type="checkbox"/> Process for protecting recipients from coercion and restraint

<ul style="list-style-type: none"> • Are recipients compelled to be absent from a setting for the convenience of the provider? • Are recipients required, against their wishes, to be present in a setting in order to benefit the provider financially? • Do recipients feel they can discuss concerns without fearing consequences? • Are recipients informed regarding how to file a complaint? • Is complaint filing information posted and understandable by recipients? • Can complaint filing be done anonymously? • Are staff trained in the use of restrictive interventions?
<input type="checkbox"/> Provides opportunities/support for recipient initiative, autonomy, and independence
<ul style="list-style-type: none"> • Do recipients have opportunities to participate regularly in meaningful non-work activities in community settings of their choice and for the period of time preferred? • Does the setting make clear to recipients that they are not required to adhere to a set schedule? • Do staff ask recipients about their needs and preferences? • Are recipients assisted in a manner that leaves them feeling empowered to make choices and decisions? • Are the choices and decisions supported/accommodated rather than ignored or denied?
<input type="checkbox"/> Optimizes opportunities for recipients to make choices regarding daily activities
<ul style="list-style-type: none"> • Does the setting support recipients in choosing their daily activities and in setting and controlling their own schedules? • Do recipients' schedules vary from others in the same setting? • Does the setting provide television/radio, access to the internet, movies, and other leisure activities that are of interest to recipients and that can be used at their convenience?
<input type="checkbox"/> Optimizes opportunities for recipients to make choices regarding the physical environment
<ul style="list-style-type: none"> • Are there barriers to movement preventing entrance to or exit from certain areas in the setting? • Are recipients limited to a specific area for activities or able to move about to various areas? • Are recipients able to move inside and outside the setting as they choose as opposed to being "parked" in one spot for the convenience of the provider? • Are there requirements or a curfew regarding return to the setting if a recipient leaves? • Are recipients assisted to access amenities (e.g., pool or gym) that are used by non-recipients? • Are recipients restricted to meeting visitors in an area designated for that purpose?
<input type="checkbox"/> Optimizes opportunities for recipients to choose with whom to interact
<ul style="list-style-type: none"> • Does the setting require recipients to occupy assigned seating for activities or meals? • Does the setting limit conversations/interactions among recipients? • Does the setting provide an area for recipients who wish, on occasion, to not participate in activities or to be alone?
<input type="checkbox"/> Facilitates choice regarding services/supports and agency staff who provide them
<ul style="list-style-type: none"> • Do recipients know how and to whom to make a request for services? • Are recipients aware of the fact that they can choose to receive services from other providers/staff? • Are recipients able to identify other providers who could provide the same services? • Does the setting assist recipients to change providers or to obtain other requested services? • Do recipients express satisfaction with the services received? • If a recipient is dissatisfied with/would prefer not to interact with an individual staff member, is he/she supported in the choice to receive services from a different staff person?

Additional qualities required for provider-owned or controlled residential settings
<input type="checkbox"/> Offers choice of non-disability specific setting and private unit
<ul style="list-style-type: none">• Is the setting limited to use by people with disabilities?• Was the setting chosen from among options that included non-disability specific settings?• Are recipients offered the choice of a private room/unit where they are available for non-recipients?
<input type="checkbox"/> Residential options based on recipient resources for room and board
<ul style="list-style-type: none">• Were the residential services offered realistic in view of the recipient resources for payment of room and board?• If residential services were limited because of resources, was the matter discussed with the recipient?
<input type="checkbox"/> Legally enforceable agreement specifying responsibilities and protections from eviction
<ul style="list-style-type: none">• Does the agreement specify the responsibilities of the recipient and the provider with respect to the setting?• Does the agreement specify the circumstances under which it can be terminated?• Does the agreement address the steps a recipient can follow to request a review/appeal a termination of services?• Does the recipient understand the terms of the agreement?
<input type="checkbox"/> Sleeping or living unit doors lockable by recipient
<ul style="list-style-type: none">• Can the doors to the unit be locked?• Can bathroom doors be locked?• Do recipients have keys to their doors?
<input type="checkbox"/> Sleeping or living unit key availability limited to appropriate staff
<ul style="list-style-type: none">• Is there a master key or are there copies of unit keys available for use if needed?• Is use of the master key/unit keys limited to appropriate staff?• Are the master key/unit keys used to enter units only in limited circumstances agreed upon with the recipient?• Is there a policy regarding the circumstances when the master key/unit keys may be used by staff and which staff may use those keys?
<input type="checkbox"/> Choice of roommates if sleeping or living units shared
<ul style="list-style-type: none">• Are recipients given a choice regarding roommates?• Do recipients speak about their roommates in a positive manner?• Do recipients express a wish to remain in a room/unit with their roommates?• Are couples able to choose whether to share a room?• Do recipients know that they can (and how to) request a change in roommates?

☐ **Lease/rental agreement addresses how recipients may furnish/decorate sleeping/living units**

- Do recipients know that they may furnish and decorate their units as they please within the terms spelled out in the agreement?
- Are recipients' personal items (e.g., pictures, books, memorabilia) evident and arranged as they wish?
- Do furniture, linens, and other household items reflect personal choices?
- Do recipients' units reflect varying interests and tastes rather than having a standardized appearance?
- Is furniture arranged as recipients wish for comfort?
- Are shared rooms configured so that privacy is protected when assistance is provided to recipients?

☐ **Supports recipient freedom to control schedules and activities**

- Does the setting make clear to recipients that they are not required to adhere to a set schedule for waking, bathing, eating, exercising, or activities?
- Is there staff sufficient to allow for scheduling variations?
- Do recipients' schedules vary from others in the same setting?
- Does the setting allow for the recipient to be alone and not participate in activities?
- Do recipients have access to typical home areas such as cooking and dining areas, laundry, and living and entertainment areas?
- Are meals served according to a set menu at scheduled times in a specified location?
- Can recipients request alternatives to a meal?
- Can recipients request meals at times other than when scheduled?
- Can recipients eat meals in locations other than the dining area, e.g., in an entertainment area or in private in a sleeping/living unit?

☐ **Food available to recipients at all times**

- If a recipient misses a regularly scheduled meal, are provisions made for a nutritionally-equivalent meal to be available at a time convenient to the recipient?
- Are there appliances for safe food storage and cooking/heating in recipients' sleeping/living units or in a common area accessible by recipients?
- Are snacks available anytime?

☐ **Allows visitors of recipient's choosing at any time**

- Are there limitations on visiting hours or the number of visitors allowed at one time?
- If visiting hours are addressed in the lease/rental agreement, is the recipient made aware of limitations before moving into the residential setting?
- Is furniture in living areas arranged to support small group conversations?

☐ **Physically accessible for each recipient**

- Are there features that could limit mobility, e.g., raised doorways, narrow halls, shag carpets?
- Are there physical adaptations that counter any limiting features, e.g., ramps, stair lifts, or elevators?
- Are supports to facilitate mobility provided where likely to be needed, e.g., grab bars, shower seats, or hand rails?
- Are appliances accessible, e.g., microwave reachable without difficulty, front-loading washer/dryer useable for those with mobility devices?
- Are tables and chairs at convention height for recipients to access comfortably?
- Is furniture placed so as not to obstruct pathways for those with mobility devices?
- Are there gates, locked doors, or other barriers preventing access/exit from areas in the setting?

☐ **Protocol for modification of residential setting conditions**

- Does the setting have a process/policy addressing modification of residential setting requirements when needed for recipients?
- Does the process/policy include the following?
 - Identification of a specific and individualize assessed need
 - Documentation of positive interventions and supports before modification
 - Documentation of less intrusive methods that did not work before modification
 - Description of the condition that resulted in the need for modification
 - Collection and review of data to measure effectiveness of the modification
 - Specification of timeframes for review of the modification to determine whether it is no longer needed or should be continued or terminated
 - Informed consent of the recipient
 - Assurance modification will not cause harm to the recipient

Appendix C

Provider Self-Assessment of Settings in which Home and Community-Based Services are Provided

Provider Self-Assessment of Settings in which Home and Community-Based Services are Provided

1. Provider agency name:

Provider number:

Individual completing survey

Telephone number of individual completing survey

Email address of individual completing survey

Background

The Centers for Medicare and Medicaid (CMS) has amended Medicaid regulations to include home and community-based setting requirements, 42 CFR 441.300 – 441.304. The purpose of these regulations is to ensure recipients receive services in integrated community settings that are appropriate to their needs and that provide full access to the benefits of community living. CMS has directed the states that receive Medicaid funding to verify that services are provided in settings that have the qualities required for home and community-based services.

To meet the requirements of the mandatory setting verification process, Senior and Disabilities Services (SDS) has developed this self-assessment survey for SDS-certified home and community-based services providers

- to guide provider agencies through the new federal regulations with clarification of what is, and is not, a home and community-based setting
- to provide an opportunity for provider agencies to analyze the qualities of their service settings
- to alert provider agencies of the need to identify and make any improvements to policies, procedures, or the physical environment that would make the setting consistent with the CMS-defined qualities of a home and community-based setting.

Survey information

Your agency should submit only one online survey, whether home and community-based services are provided in one setting or in multiple settings. Please evaluate each setting in which home and community-based services are provided as a separate entity when considering the survey questions. If all settings have the quality under consideration, indicate this on the survey. If, however, even one of multiple settings does not have the quality, indicate the name and address of the setting, and what the agency will do to make the setting consistent with the regulation.

The survey has two parts: Part One is applicable to all settings, including provider-owned or controlled residential settings; Part Two is applicable only to residential settings.

- Review all non-residential settings using the questions in Part One only.
- Review all provider-owned or controlled residential settings using Part One and Part Two

Thank you for your cooperation and assistance in this endeavor as together we work to enhance the quality of Medicaid home and community-based services.

PART ONE

Home and community-based services settings

The questions in Part One apply to all settings, including provider-owned or controlled residential settings.

Instructions

Consider each setting in which home and community-based services are provided as a separate entity when answering questions.

For each setting where waiver services are provided to recipients

- review the setting quality, the federal regulation, and statement program impact
- answer the questions related to the regulation
- for each setting that does not meet the CMS-defined quality addressed by the question, list the name and address of the setting and describe what the agency will do to make that setting consistent with the regulation

Setting quality: NON-INSTITUTIONAL CHARACTERISTICS

Federal regulation

42 CFR 441.301 (c)(5) A location that has the qualities of an institutional setting is presumed to lack the qualities of a home and community based (HCB) setting, including the following:

- A setting that is located in a building that is a publicly or privately operated facility that provides inpatient institutional treatment
- A setting that is located in a building on the grounds of, or immediately adjacent to a public institution
- A setting that isolates recipients from the broader community of individuals who do not receive waiver services

Program impact

Waiver services may be provided only in locations that have the qualities of a home and community-based setting. Some locations, defined in the regulation, are presumed to lack such qualities because they isolate recipients from the community.

Self-assessment questions

2. **Is any setting in which the agency provides waiver services located in a building that is**
- **a publicly or privately operated facility that provides inpatient institutional treatment, or**
 - **on the grounds of, or immediately adjacent to a public institution?**

☐ **Yes.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance

☐ **No**

3. **Does any setting in which the agency provides waiver services isolate recipients from the broader community of individuals who do not receive waiver services?**

CMS Guidance When assessing settings to answer these question, consider this list of characteristics that may indicate a setting that isolates:

- The setting is designed specifically for people with disabilities
- The setting is designed to provide people with disabilities multiple types of services and activities on-site
- Individuals in the setting are primarily or exclusively people with disabilities
- Individuals in the setting have little, if any, interaction with other others in the broader community

In addition, consider whether any setting could be one of the following types of settings that have the effect of isolating recipients:

- Farmstead or disability-specific farm/ranch community
- Gated or secured community specifically for persons with disabilities
- Residential schools
- Multiple settings operationally related and near each other (for example, group homes in close proximity)

- ☐ **Yes.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance.
- ☐ **No**

Setting quality: COMMUNITY INTEGRATION AND SUPPORT FOR RECIPIENT PARTICIPATION

Federal regulation

42 CFR 441.301 (c)(4)(i) Home and community-based settings must be integrated in and support full access by recipients to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving waiver services.

Program impact

Waiver services may be provided only in settings that are integrated in the community and support recipients who choose to participate in community life in the same way non-recipients participate.

Self-assessment questions

4. Do all settings in which the agency provides waiver services provide opportunities and support for recipients who wish to seek employment in competitive, integrated settings?

CMS guidance The purpose of this regulation is to ensure provider support for recipients who choose to work. When assessing settings to answer the following question, evaluate whether recipients (including those who do not receive supported employment services) have the freedom, and support from provider staff, to seek employment in the community.

☐ **Yes**

☐ **No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance

5. Do all settings in which the agency provides waiver services provide opportunities for recipients to participate in community life and to receive services in the community?

☐ **Yes**

☐ **No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance

6. Do all settings in which the agency provides waiver services provide opportunities for recipient control of personal resources?

☐ **Yes**

☐ **No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance.

Setting quality: SELECTION OF SETTING BY THE RECIPIENT

Federal regulation

42 CFR 441.301 (c)(4)(ii) The setting is selected by the recipient from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The settings options are identified and documented in the person-centered service plan and are based on the recipient's needs, preferences, and, for residential settings, resources for room and board.

Program impact

Waiver services may be provided only in settings that are selected by the recipient from among settings that are not designed for or limited to people with disabilities.

Self-assessment questions

7. Are the needs and preferences of recipients taken into consideration when they are offered options for settings in which the agency provides waiver services?

☐ **Yes**

☐ **No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance

8. Are any settings in which waiver services are provided designed for or used primarily by people with disabilities?

☐ **Yes**

☐ **No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance

9. Are recipients offered the choice of receiving waiver services in non-disability specific settings?

☐ **Yes**

☐ **No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance.

**Setting quality: SUPPORT OF RECIPIENT RIGHTS AND
FREEDOM FROM COERCION AND RESTRAINT**

Federal regulation

42 CFR 441.301 (c)(4)(iii) The setting ensures the recipient's rights of privacy, dignity, and respect, and freedom from coercion and restraint in settings where waiver services are provided.

Program impact

Waiver services may be provided only in settings that ensure recipient rights of privacy, dignity, and respect, and freedom from coercion and restraint.

Self-assessment questions

10. Do all settings in which the agency provides waiver services have a process for protecting the privacy, dignity, and respect of recipients?

☐ **Yes**

☐ **No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance

11. Do all settings in which the agency provides waiver services have a process for protecting recipients from coercion and restraint?

☐ **Yes**

☐ **No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance.

**Setting quality: PROMOTION OF RECIPIENT INITIATIVE, AUTONOMY, AND INDEPENDENCE
IN MAKING LIFE CHOICES**

Federal regulation

42 CFR 441.301 (c)(4)(iv) The setting optimizes, but does not regiment, recipient initiative, autonomy, and independence in making life choices, including but not limited to daily activities, physical environment, and with whom to interact in settings where HCB services are provided.

Program impact

Waiver services may be provided only in settings that optimize recipient initiative, autonomy and independence in making life choices.

Self-assessment questions

12. Do all settings in which the agency provides waiver services provide opportunities and support for recipients to use their initiative, autonomy, and independence in making life choices?

☐ **Yes**

☐ **No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance

13. Do all settings in which the agency provides waiver services optimize opportunities for recipients to make choices regarding daily activities?

CMS guidance Recipients must have choices regarding activities including whether to participate in a group activity or to engage in other activities that may or may not be pre-planned.

☐ **Yes**

☐ **No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance

14. Do all settings in which the agency provides waiver services optimize opportunities for recipients to make choices regarding the physical environment?

CMS guidance Physical settings must meet recipient needs by being accessible, and should not appear to be the same for everyone; for example, recipients must have choices regarding room décor and furnishings so that the setting does not appear to be institutional in nature.

☐ **Yes**

☐ **No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance

15. Do all settings in which the agency provides waiver services optimize opportunities for recipients to choose with whom to interact?

☐ **Yes**

☐ **No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance.

**Setting quality: RECIPIENT CHOICE OF SERVICES AND SUPPORTS
AND OF STAFF WHO RENDER THEM**

Federal regulation

42 CFR 441.301 (c)(4)(v) The setting facilitates recipient choice regarding services and supports, and who provides them in settings where HCB services are provided.

Program impact

Waiver services may be provided only in settings that facilitate recipient choice of services and supports and choice of agency staff that provide those services and supports.

Self-assessment questions

- 16. Do all settings in which the agency provides waiver services facilitate recipient choice regarding**
- services and supports, and**
 - agency staff that provide those services and supports?**

☐ **Yes**

☐ **No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance.

END OF PART ONE

Complete Part Two if the agency owns or controls residential settings in which waiver services are provided.

PART TWO

Provider-owned or -controlled residential settings: additional conditions

The questions in Part Two apply to provider-owned or controlled residential settings only.

Instructions

Consider each setting in which home and community-based services are provided as a separate entity when answering questions.

For each setting where waiver services are provided to recipients

- review the setting quality, the federal regulation, and statement program impact
- answer the questions related to the regulation
- for each setting that does not meet the CMS-defined quality addressed by the question, list the name and address of the setting and describe what the agency will do to make that setting consistent with the regulation

Setting quality: SELECTION OF SETTING BY THE RECIPIENT

Federal regulation

42 CFR 441.301 (c)(4)(ii) The setting is selected by the recipient from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The settings options are identified and documented in the person-centered service plan and are based on the recipient's needs, preferences, and, for residential settings, resources for room and board.

Program impact

Waiver services may be provided only in settings that are selected by the recipient from among settings that are not designed for or limited to people with disabilities. For residential services, the options must take into consideration recipient resources for room and board, and whether those resources would cover the cost of a private unit in the chosen residential setting.

Self-assessment questions

17. Does each provider-owned or controlled residential setting offer recipients the choice of a private unit?

☐ **Yes**

☐ **No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance

18. Are recipients offered residential setting options on the basis of their resources for room and board?

☐ **Yes**

☐ **No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance.

**Setting quality: RECIPIENT LEGAL RIGHT TO A SPECIFIC PHYSICAL PLACE
AND PROTECTION FROM EVICTION**

Federal regulation

42 CFR 441.301 (c)(4)(vi)(A) The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the recipient, and the recipient has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity.

Program impact

Waiver services in provider-owned or -controlled residential settings must operate under the terms of a legally enforceable agreement that provides the same responsibilities and protections available to non-recipients in similar rental or ownership arrangements.

Self-assessment questions

19. Do all provider-owned or -controlled residential settings in which waiver services are provided enter into legally enforceable agreements with recipients addressing responsibilities and protections from eviction that are the same as tenants have under the landlord/tenant law of the jurisdiction in which the residential setting is located?

☐ **Yes**

☐ **No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance.

**Setting quality: RECIPIENT RIGHT TO PRIVACY, INCLUDING
LOCKABLE DOORS AND CHOICE OF ROOMMATE**

Federal regulation

42 CFR 441.301 (c)(4)(vi)(B) Each recipient must have privacy in his/her sleeping or living unit in settings where waiver services are provided.

(1) Units must have entrance doors lockable by the recipient with only appropriate staff having keys to the doors.

(2) Recipients sharing units must have a choice of roommates in the setting.

(3) Recipients must have freedom to furnish and decorate their units within the lease or other agreement.

Program impact

Waiver services may be provided only in settings that make privacy in sleeping or living units available for recipients.

Self-assessment questions

20. In all provider-owned or -controlled residential settings in which waiver services are provided, are the entrance doors to the sleeping or living units lockable by the recipients who reside in those units?

☐ **Yes**

☐ **No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance

21. Do all provider-owned or -controlled residential settings in which waiver services are provided limit key availability so that only appropriate staff can enter the sleeping or living units of recipients?

☐ **Yes**

☐ **No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance

22. Do all provider-owned or -controlled residential settings in which waiver services are provided ensure that recipients have a choice of roommates if sleeping or living units are shared?

☐ **Yes**

☐ **No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance

23. Do all provider-owned or -controlled residential settings in which waiver services are provided have a lease or other rental agreement that addresses how recipients may furnish and decorate their units?

☐ **Yes**

☐ **No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance.

Setting quality: RECIPIENT CONTROL OF SCHEDULES AND ACTIVITIES, AND ACCESS TO FOOD

Federal regulation

42 CFR 441.301 (c)(4)(vi)(C) Recipients must have the freedom and support to control their own schedules and activities, and to have access to food at all times in settings where waiver services are provided.

Program impact

Waiver services may be provided only in settings that support recipient control of their own schedules and activities, and make food available to recipients at all times.

Self-assessment questions

24. Do all provider-owned or -controlled residential settings in which waiver services are provided extend to recipients the freedom to control their own schedules and activities, and provide the support to enable them to do so?

☐ **Yes**

☐ **No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance

25. Do all provider-owned or -controlled residential settings in which waiver services are provided make food available to recipients at all times?

CMS Guidance If a recipient misses a regularly scheduled meal, the nutritional equivalent must be made available at a time convenient to the recipient. Provision must be made for access to safe storage and heating of food, e.g., microwave and refrigerator, either in the recipient's sleeping area or a common area accessible to the recipient. The recipient must have access to snacks at any time the recipient chooses. Exceptions to this requirement may be made if justified in accordance with 42 CFR 441.301 (c)(4)(vi)(F).

☐ **Yes**

☐ **No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance.

Setting quality: RECIPIENT RIGHT TO HAVE VISITORS AT ANY TIME

Federal regulation

42 CFR 441.301 (c)(4)(vi)(D) Recipients must be able to have visitors of their choosing at any time in settings where waiver services are provided.

Program impact

Waiver services may be provided only in settings that allow recipients to have visitors at any time.

Self-assessment questions

26. Do all provider-owned or -controlled residential settings in which waiver services are provided allow recipients to have visitors of their choosing at any time?

☐ **Yes**

☐ **No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance.

Setting quality: PHYSICAL ACCESSIBILITY FOR RECIPIENT

Federal regulation

42 CFR 441.301 (c)(4)(vi)(E) The settings where waiver services are provided must be physically accessible for the recipient.

Program impact

Waiver services may be provided only in settings that physically accessible for the recipient.

Self-assessment questions

27. Do all provider-owned or -controlled residential settings in which waiver services are provided ensure that the settings are physically accessible for the recipient?

☐ **Yes**

☐ **No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance.

**Setting quality: CHANGES TO REQUIREMENTS MADE ONLY WHEN JUSTIFIED
TO MEET RECIPIENT NEED**

Federal regulation

42 CFR 441.301 (c)(4)(vi)(F) Any modification of the conditions, under 42 CFR 441.301 (c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan. To justify a modification, the following must be documented:

A specific and individualized assessed need

- *The positive interventions and supports used prior to any modifications to the service plan*
- *The less intrusive methods of meeting the need that have been tried, but did not work*
- *A description of the condition that lead to the specific assessed need*
- *A plan for regular collection and review of data to measure the ongoing effectiveness of the modification*
- *Time periods for periodic review to determine if the modification continues to be necessary or can be terminated*
- *The informed consent of the recipient*
- *Assurances that the interventions and supports will cause no harm to the recipient*

Program impact

Waiver services may be provided only in settings where the additional conditions for provider-owned or controlled residential settings are not changed except to meet the specific, assessed needs of recipients, and all changes are justified and documented.

Self-assessment questions

28. Do all provider-owned or -controlled residential settings in which waiver services are provided have a protocol for modification of the conditions applicable to those settings [specified in 42 CFR 441.301 (c)(4)(vi)(A) through (D)] that addresses all the requirements?

☐ **Yes**

☐ **No.** For each setting that does not meet this requirement, list the name and address of the setting, and what the agency will do to bring it into compliance.

Appendix D

Evidence of Public Information and Opportunity for Public Comment



March 19, 2014

SDS E-Alert – Information Sharing Webinar: New CMS Regulations Governing Home and Community-Based Medicaid Waivers

Join Angela Salerno, Policy and Program Development Unit Manager, and SDS training staff for information about new CMS Home and Community Based Waiver regulations.

On March 17, 2014 new Centers for Medicare and Medicaid (CMS) regulations governing 1915(c) Medicaid waivers became effective. This webinar will cover the pertinent changes including amendments to the person-centered planning process, and new requirements for acceptable sites for delivery of home and community-based services.

There will be time for Q and A.

Audio for the session is available free of charge over your computer speakers or headset. Alternatively you may call on the phone for audio. The webinar system provides a long distance toll call number for the webinar. You would be charged regular long distance by your carrier.

REGISTER NOW

Title: *SDS Information Sharing Session: Introduction to New CMS HCB Waiver Regulations*
Date: Tuesday, April 1, 2014
Time: 1:30 PM - 3:00 PM AKDT

After registering you will receive a confirmation email containing information about joining the Webinar.

System Requirements

PC-based attendees

Required: Windows® 8, 7, Vista, XP or 2003 Server

Mac®-based attendees

Required: Mac OS® X 10.6 or newer

Mobile attendees

Required: iPhone®, iPad®, Android™ phone or Android tablet



The new CMS regulations along with informational materials can be found at [Medicaid.Gov, Home and Community-Based Services](#).

This message is a follow-up to the March 19 E-Alert below. If you have already registered for the webinar, you do not have to re-register. Thank you.

March 19, 2014

SDS E-Alert – Information Sharing Webinar: New CMS Regulations Governing Home and Community-Based Medicaid Waivers

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REGISTER NOW

Title: *SDS Information Sharing Session: Introduction to New CMS HCB Waiver Regulations*
Date: Tuesday, April 1, 2014
Time: 1:30 PM - 3:00 PM AKDT



April 4, 2014

SDS E-Alert – SDS Presentation on Changes to 1915(c) Medicaid Waiver Regulations

Attached is the April 1 SDS presentation on changes to federal regulations governing the Medicaid waiver program. The presentation is also available on the [SDS web](#).

On slide 11 of the presentation, the link provided for the CMS web page has been inoperable for two days. Please check back.

June 10, 2014

SDS E-Alert – CMS Regulations – Upcoming Meetings

SDS Information Sharing Session: Upcoming Meetings about New CMS HCB Waiver Regulations

REGISTER NOW



SDS Information Sharing Session

Join us for a Webinar on June 27

Join Angela Salerno, Health Program Mgr III and SDS management team. Learn a short history of the HCB waiver in Alaska, how to prepare for meaningful system change in response to the new CMS regulations, and how to get the most out of upcoming face to face meetings.

Audio for the session is available via the computer system speakers (VOIP). VOIP is free of charge. Alternatively you may call the phone number provided for audio instead of using the computer system. Please be aware that this is a long distance toll call.

Title: *SDS Information Sharing Session: Upcoming Meetings about New CMS HCB Waiver Regulations*

Date: Friday, June 27, 2014

Time: 11:00 AM - 12:00 PM AKDT

After registering you will receive a confirmation email containing information about joining the Webinar.

System Requirements

PC-based attendees

Required: Windows® 8, 7, Vista, XP or 2003 Server

Mac®-based attendees

Required: Mac OS® X 10.6 or newer

Mobile attendees

Required: iPhone®, iPad®, Android™ phone or Android tablet

Space is limited.

Reserve your Webinar seat now at:

<https://www2.gotomeeting.com/register/707478314>

June 27, 2014

SDS E-Alert – Invitation to Community Forums on State Implementation of CMS Regulations

SDS is hosting a series of Community Forums to gather input from providers and other stakeholders on state implementation of the March 17, 2014 [CMS regulations](#). These regulations added new requirements around person-centered planning for recipients of home and community-based services, and new home and community-based criteria for settings in which services are provided.

Some of the topics we want to discuss:

- *How best to assess providers and settings for their home and community-based qualities;*
- *How to identify what makes a non-residential setting home and community-based;*
- *The practical issues around separating service planning from service provision;*
- *The role of care coordination/case management in SDS service system;*
- *Possible state statutory/regulatory strategies*

Dates/Locations

- August 18 – Fairbanks – *North Star Borough Assembly Chambers*
- August 19 – Kenai - *River Center*
- August 20 – Anchorage –*Anchorage Senior Center*
- August 21 – Juneau – *CBJ Assembly Chambers*
- August 22 – Statewide webinar/audio conference

You may also provide your input in writing at angela.salerno@alaska.gov , or call 465-4874.

Attached are documents (used during 6-27-14 webinar) containing additional information on the CMS regulations, the history of Medicaid waivers, and SDS guidance so far.



July 14, 2014

SDS E-Alert – UPDATE: Dates and Times for Community Forums on State Implementation of CMS Regulations

SDS is hosting a series of Community Forums to gather input from providers and other stakeholders on state implementation of the March 17, 2014 [CMS regulations](#). These regulations added new requirements around person-centered planning for recipients of home and community-based services, and new home and community-based criteria for settings in which services are provided.

Dates/Times/Locations

- Monday August 18, 1:30 – 3:00: Fairbanks – *North Star Borough Assembly Chambers*
- Tuesday August 19, 1:30 – 3:00: Kenai – *Kenai River Center*
- Wednesday August 20, 12:00 – 1:30: Anchorage – *Anchorage Senior Center*
- Thursday August 21, 1:30 – 3:00: Juneau – *City & Borough of Juneau Assembly Chambers*
- Friday August 22, 1:30 – 3:00: Statewide webinar/audio conference (registration information will be sent in a future E-Alert)

Some of the topics we want to discuss:

- *How best to assess providers and settings for their home and community-based qualities;*
- *How to identify what makes a non-residential setting home and community-based;*
- *The practical issues around separating service planning from service provision;*
- *The role of care coordination/case management in SDS service system;*
- *Possible state statutory/regulatory strategies*

You may also provide your input in writing at angela.salerno@alaska.gov , or call 465-4874.



August 14, 2014

SDS E-Alert – Reminder: Dates and Times for Community Forums on State Implementation of CMS Regulations

SDS is hosting a series of Community Forums to gather input from providers and other stakeholders on state implementation of the March 17, 2014 [CMS regulations](#). These regulations added new requirements around person-centered planning for recipients of home and community-based services, and new home and community-based criteria for settings in which services are provided.

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August 15, 2014

SDS E-Alert – Information Sharing: Community Input on New CMS Regs

SDS Information Sharing Session: Gathering Input about New CMS HCB Waiver Regulations

REGISTER NOW



SDS Information Sharing Session

Join us for a Webinar on August 22

SDS is hosting a statewide webinar to gather input from providers and other stakeholders on state implementation of the March 17, 2014 CMS regulations. These regulations added new requirements around person-centered planning for recipients of home and community-based services, and new home and community-based criteria for settings in which services are provided. Audio for the session is available via the computer system speakers (VOIP). VOIP is free of charge. Alternatively you may call the phone number provided for audio instead of using the computer system. Please be aware that this is a long distance toll call.

Title: *SDS Information Sharing Session: Gathering Input about New CMS HCB Waiver Regulations*

Date: Friday, August 22, 2014

Time: 1:30 PM - 3:00 PM AKDT

After registering you will receive a confirmation email containing information about joining the Webinar.

System Requirements

PC-based attendees

Required: Windows® 8, 7, Vista, XP or 2003 Server

Mac®-based attendees

Required: Mac OS® X 10.6 or newer

Mobile attendees

Required: iPhone®, iPad®, Android™ phone or Android tablet

Space is limited.

Reserve your Webinar seat now at:

<https://www2.gotomeeting.com/register/765789554>



September 15, 2014

SDS E-Alert – CMS Regulation Update

Thank you to everyone who participated during the week of August 18th in the SDS community forums on implementation of the new CMS regulations.

These federal regulations require a “conflict-free” Medicaid waiver system with separation of care planning and monitoring from care provision, and home and community-based service settings that provide full access to the benefits of community living. Attached is a summary of questions asked and “themes” discussed at the community forums. Also attached is the community forum PowerPoint presentation.

The next phase of work is development and submission of Alaska’s “*Statewide Transition Plan*.” The plan is due to CMS on March 17, 2015. **This is not the date by which all system changes must be in place.** While federal regulations allow for up to five years for transition (March 17, 2019), in its transition plan, Alaska will have to justify the amount of transition time requested.

SDS must now verify that all individuals receiving Medicaid home and community-based services receive those services in integrated community settings appropriate to their needs. [Updated guidance from the Centers for Medicare and Medicaid](#) clarifies that states must conduct “site specific evaluations” of settings using the federal requirements as a basis.

SDS will employ a “provider self-assessment” survey during which agencies will evaluate every setting in which services are provided, both residential and non-residential. The survey will provide an opportunity for the agency to analyze the characteristics of their service settings, and to consider improvements to policies, procedures or the physical environment that would make the setting consistent with the CMS requirements. **Look for the setting self-assessment survey in the month of September.**

SDS will also conduct targeted assessments of those settings identified by SDS staff as possibly being out of compliance with federal requirements. SDS will contact those providers directly to arrange for site visits of identified settings. Again, the purpose of the site visit is to provide technical assistance regarding policies, procedures and specific setting qualities and characteristics.

Please note: SDS is now sending E-Alerts through an account set up exclusively for that purpose. If you have questions, please respond directly to this E-Alert. Thank you.

Themes from Statewide Community Forums on New CMS Regulations August 18-22, 2014

Alaska Department of Health and Social Services - Division of Senior and Disabilities Services

Topic	Sub-topic	Questions/Comments
Care Coordination	Care coordination capacity	Expedite certification of care coordinators?
		What if there are not available care coordinators in a locality?
		System will lose care coordinators; loss of workforce
		Use of technology, telemedicine
		How will care coordinator be able to track quality of services in an independent agency?
		New agency care coordinators who must go independent need three years of supervisory experience.
	Care coordinator quality, coordination and oversight	Maximum caseloads
		Policy to hold recipients harmless if care coordinator disappears?
		Will parents be able to assess quality of care coordinator?
		Providers rely on care coordinators for timely POC so providers can bill for services
	Dealing with acuity	Cherry picking fear
		IDD, CCMC waivers require higher level of involvement
		High acuity recipients will fare worse
	Families	Family education about purpose of change
		Families are hesitant to seek care coordination services from those they do not know

Topic	Sub-topic	Questions/Comments
Care Coordination “Conflict-free” service system “	Roles/responsibilities	Loss of association with, support of agency will be detrimental for families.
		Long standing relationships between families and experienced care coordinators will end
		Distinguish between roles of provider and care coordinator in service planning
		What will the agency responsibility be in case planning?
		Care coordination;” vs. “case management”?
		How will an individual access a care coordinator
		Agencies that provide both - can they provide care coordination for recipients that don’t receive HCB services?
		Agency care coordinators have immediate access to recipients, which will be lost.
		Loss of care coordination within HCBS agency – loss of institutional knowledge and experience
		Grant and waiver service rules in alignment?
	Affiliation	<i>Medicaid Reform Advisory Group</i> redesign of care coordination system. Is the Dept. looking at incorporating their recommendations? More global planning than just for waiver services?
		Can agencies share administrative resources?
		Co-op, regional representation?
		Meaning of “conflict free” and “affiliation.”
		Rural communities – how will you separate service planning and provision?
		Will mentoring be allowed?
	Rates	Agencies have been “subsidizing” care coordination. Rate hike?

Topic	Sub-topic	Questions/Comments
Care Coordination		Rates for care coordination not sufficient to support independent care coordination
		Care coordinator workload will increase
HCBS settings	Full access to community living	Additional services may be needed
		What is "access enough"?
		What happens when guardian places restrictions on recipient access?
		Employment settings – need provider enterprise sites where people can "start the process" toward integrated employment settings.
	Recipient choice	How to ensure recipients have choice, are able to keep familiar caregivers
		Recipients with complex needs, behavior issues, and dementia need options that are more structured, restrictive
		Will "intentional community" be acceptable to CMS?
		Will there be exceptions to rules about food, visitors?
		Recipients with cognitive disabilities – what is the role of representative decision-makers?
	Recipient protections	Landlord/tenant vs. ALH regs: which takes precedence?
		Will a rental agreement require ALH to accommodate a resident's increased need with additional services or personnel?
		Are "house rules" allowable? (mandatory in licensing regulations)
		Provider-run residences – CMS bias. How will State view them?
Compliance & monitoring	Documentation	Adequacy of justification – who decides?
		How to verify if care coordinator is "statewide" or the "only available entity"

Topic	Sub-topic	Questions/Comments
		Documentation – by care coordinator around POC, and provider, day-to-day service provision?
Transition Plan	Process of developing transition plan	Must have external participation
		Provider community needs to come together to strategize
		AADD – ask for maximum time for transition – need to educate recipients and families
		Anticipate growth in senior population



October 2, 2014

New federal regulations governing the Medicaid waiver program require SDS to verify that all individuals receiving Medicaid home and community-based services receive those services in integrated community settings appropriate to their needs and that provide full access to the benefits of community living. [Updated guidance from the Centers for Medicare and Medicaid](#) clarifies that states must conduct “site specific evaluations” of settings using the federal requirements as a basis.

The first step in this verification process is the *Provider Self-Assessment of Settings* survey. All SDS-certified home and community-based provider agencies are asked to evaluate every setting in which services are provided, both residential and non-residential. The survey is designed to help educate providers regarding the provisions of the new regulations, and the accompanying documents provide clarifying information. In the process of conducting the survey, providers will analyze the characteristics of their service settings, and identify those improvements to policies, procedures or the physical environment that will make the setting consistent with the CMS requirements.

Please use this link to access the survey: <https://www.surveymonkey.com/s/RLNMHV5>

Also attached to this message is a “short form” survey (PDF version) that, prior to completing the survey, you may use to familiarize yourself with the questions, and a “settings quality checklist” with exploratory questions that may assist you in the analysis of your service settings. Also attached are “FAQs” that reflect CMS guidance on completing this phase of federal regulation implementation. The link to the survey and accompanying documents will also be available on the [SDS web](#).

Please complete the survey by October 31, 2014..

Thank you in advance for your participation. While it is the state’s responsibility to verify that all service sites meet federal home and community-based requirements, your participation is essential. Please complete the survey, and help SDS build a home and community-based service system that promotes independency, dignity and excellent quality of life for recipients.

Frequently Asked Questions Regarding Implementation of Federal Regulations Governing Home and Community-Based Settings for Recipients of Medicaid Waiver Services

Q1: The new regulations require that residents of a provider-owned or controlled residential setting have a locking “front door,” choice of roommates, freedom to furnish and decorate, the right to control their own schedule and activities, and be allowed to have visitors at any time. How will residential supported living and residential habilitation providers balance the practical needs of running a residential setting while allowing residents control of their environment? Can the home make exceptions?

A1: The new federal regulations at [42 CFR 441.301\(c\)\(4\)\(vi\)](#) (A) through (D) detail additional home and community-based characteristics of provider-owned or operated settings. Providers should assume that all residents must be given the opportunity to enjoy these “baseline” rights and freedoms. For example, an assisted living home that provides Residential Supported Living services may not impose “blanket” rules prohibiting overnight visitors or establishing a time for “lights out.”

If a provider or the resident’s representative wishes to make an exception and place restrictions on any of these rights or freedoms, regulations at 302(c)(4)(vi)(F) clarify that any modification “must be supported by a specific assessed need and justified in the person-centered service plan.”

For example, a resident who experiences a cognitive disability may not have the capacity to safely manage their own schedule and activities, and visitors at any time may pose the danger of abuse or exploitation. If restrictions are to be imposed, the regulations in (F) of this section specify the process that must be documented, in the plan of care, before any setting modifications may be made.

Q2: “House rules” are a regulatory requirement of running an assisted living home. This seems like a conflict with the “recipient protections” found in the new CMS regulations.

A2: Reasonable house rules that respect all residents’ rights are an important part of assisted living home life. But restrictive, blanket house rules that needlessly constrain the resident’s rights or freedoms will put the home out of compliance with CMS regulations. The guiding principle of individualized planning according to each resident’s preferences and needs, including safety and security, remains.

Q3: I operate a small assisted living home that serves five individuals in a family home. I have never negotiated a “lease” with the residents – how do I proceed?

A3: The CMS regulations call for a “legally enforceable agreement” that could be a “lease, residency agreement or other form of written agreement.” Alaska statute at 47.33.210 governing assisted living homes requires the resident to enter into a “residential services contract” that may serve as the vehicle for resident protection if it addresses the eviction process and appeals comparable to those provided under landlord/tenant laws.

Q4: Some recipients who experience intellectual or developmental disabilities and who want to work need a workplace or other setting in which to test out their employment skills. Do the new regulations allow for employer-controlled employment settings where recipients can start the employment process in a more sheltered environment?

A4: No. The federal regulations at [42 CFR 441.301\(c\)\(5\)](#), *Settings that are not Home and Community-Based*, include “any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS will be presumed to be a setting that has the qualities of an institution..” This directive, coupled with Alaska’s Medicaid waiver regulations and Conditions of Participation, prohibit SDS from paying for Supported Employment services in sheltered workshops or sheltered enclaves that employ only people with disabilities, or that segregate individuals with disabilities from the larger community. Regulations at [7 AAC 130.270\(b\)\(2\)\(A\)](#) state that Supported Employment services are available (only) at worksites where individuals without disabilities are employed. The opening statement/definition of Supported Employment found in the [COP](#) states “Supported employment services may be offered in a variety of settings, but, because independence and community integration are significant goals for these services, they may not be provided in sheltered workshops or similar specialized vocational facilities.”

Regulations governing Supported Employment services do allow for up to three months of job preparation services, which can include “pre-employment” activities that may take place in a non-integrated setting.



The *Provider Self-Assessment of Settings* survey is to be completed by the provider agency administrator or their designee. If your agency provides any home and community-based services through any of the four Medicaid waivers, please complete the survey. **Independent care coordinators, and agencies that provide care coordination only do not complete the survey.**

This phase of work involves only service provider agencies as they assess their service settings in light of the new CMS regulations. SDS is still in the process of working with the provider community on development of an action plan for implementation of “conflict-free case management” which will involve care coordinators.

October 2, 2014

New federal regulations governing the Medicaid waiver program require SDS to verify that all individuals receiving Medicaid home and community-based services receive those services in integrated community settings appropriate to their needs and that provide full access to the benefits of community living. [Updated guidance from the Centers for Medicare and Medicaid](#) clarifies that states must conduct “site specific evaluations” of settings using the federal requirements as a basis.

The first step in this verification process is the *Provider Self-Assessment of Settings* survey. All SDS-certified home and community-based provider agencies are asked to evaluate every setting in which services are provided, both residential and non-residential. The survey is designed to help educate providers regarding the provisions of the new regulations, and the accompanying documents provide clarifying information. In the process of conducting the survey, providers will analyze the characteristics of their service settings, and identify those improvements to policies, procedures or the physical environment that will make the setting consistent with the CMS requirements.

Please use this link to access the survey: <https://www.surveymonkey.com/s/RLNMHV5>

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Please complete the survey by October 31, 2014..

Thank you in advance for your participation. While it is the state’s responsibility to verify that all service sites meet federal home and community-based requirements, your participation is essential. Please complete the survey, and help SDS build a home and community-based service system that promotes independency, dignity and excellent quality of life for recipients.

October 10, 2014

SDS E-Alert – Info Sharing Session: *Provider Self-Assessment of Sites* Survey

SDS Information Sharing Session: New CMS HCB Waiver Regulations - Q&A on "Provider Self-Assessment of Sites" Survey

REGISTER NOW



SDS Information Sharing Session

Join us for a Webinar on October 15

SDS is hosting a statewide webinar to answer questions from providers on the SDS "Provider Self-Assessment Survey of Sites."

Audio for the session is available via the computer system speakers (VOIP). VOIP is free of charge. Alternatively you may call the phone number provided for audio instead of using the computer system. Please be aware that this is a long distance toll call.

Title: *SDS Information Sharing Session: New CMS HCB Waiver Regulations - Q&A on "Provider Self-Assessment of Sites" Survey*
Date: Wednesday, October 15, 2014
Time: 1:30 PM - 3:00 PM AKDT

After registering you will receive a confirmation email containing information about joining the Webinar.

System Requirements

PC-based attendees

Required: Windows® 8, 7, Vista, XP or 2003 Server

Mac®-based attendees

Required: Mac OS® X 10.6 or newer

Mobile attendees

Required: iPhone®, iPad®, Android™ phone or Android tablet

Space is limited.

Reserve your Webinar seat now at:

<https://www2.gotomeeting.com/register/592969306>

Frequently Asked Questions Regarding Implementation of Federal Regulations Governing Home and Community-Based Settings for Recipients of Medicaid Waiver Services

Provider Self-Assessment of Settings Survey

Q5: Why are you asking providers to complete the Provider Self-Assessment of Settings survey?

A5: New federal regulations require the state to verify that every recipient of Medicaid waiver services is receiving those services in a CMS-defined “home and community-based setting,” and we need your help. This self-assessment is your opportunity to understand the new federal regulations, and to look objectively at the way the services you provide either integrate, or isolate recipients in their homes and communities. SDS is asking providers to analyze and assess their service settings to see if they meet, or could be modified to meet, the CMS regulatory requirements. The self-assessment survey will also be the state’s primary source of data for gauging system-level compliance with the setting requirements.

Q6: Is this the only way SDS will verify that agencies are in compliance with the setting requirements?

A6: No. Early in the process the SDS Provider Certification and Compliance Unit began identifying agency sites that, according to the CMS guidance needed additional scrutiny. SDS staff are making informal, technical assistance site visits to see agency facilities, discuss agency policy, and suggest strategies for compliance.

Q7: Is completing the survey mandatory?

A7: Completing the survey is not mandatory, but will help providers, in light of new requirements, to evaluate their service settings and develop changes in policy or the setting physical environment to promote full access to the benefits of community living. SDS will also continue to make informal visits if concerned about a site’s home and community-based qualities.

Q8: What will happen if I do indicate in the survey that one or more of our agency service settings may have deficiencies in home and community-based qualities as defined by CMS?

A8: SDS will respond with technical assistance in the form of proposals for policy changes or changes in the setting physical environment. In some cases SDS and the provider will develop a “Plan of Correction” with timelines set for completion. SDS will also integrate the new CMS setting requirements into State regulations, *Conditions of Participation* and ongoing provider certification and quality assurance efforts.

Q9: My agency serves individuals in their own homes. Are these settings subject to CMS setting requirements?

A9: A recipient’s residence, if not owned or operated by a provider, is not subject to CMS setting requirements. Therefore a provider who offers a service, (e.g., chore services, home-delivered meals) in a recipient’s residence, is not required to complete the survey for that service. If a recipient’s residence is owned or operated by a provider, it must meet CMS setting requirements and afford the recipient their personal rights to enjoy their home the same as any renter who is not receiving Medicaid home and community-based services.



October 16, 2014

SDS E-Alert –*Provider Self-Assessment of Settings Survey Due Date Extended*

SDS apologizes for the technical difficulties and failure of the 10/15/14 *Provider Self-Assessment of Service Settings* webinar. The webinar will be rescheduled for the week of October 27. Registration information will be sent by E-Alert on Monday October 20.

Because of this delay, the due date for the Survey is extended to November 14th. We apologize for the inconvenience.



November 7, 2014

Thanks to everyone who participated in the October 27th webinar on the *Provider Self-Assessment of Settings Survey*.

To access the survey, please go to the [SDS web](#) front page where you'll find the link and additional resources." Please complete the survey by November, 14, 2014.

Attached are the webinar slides and "FAQ II", a compilation of webinar questions and answers. These FAQs follow the first Q&A guidance on HCBS settings, now on the [SDS web](#).



SDS E-Alert - Open Letter to Providers, Recipients and their Families, and other Stakeholders in the Medicaid Waiver Program Regarding New CMS Regulations

In this letter, Director Duane Mayes offers information on SDS progress understanding and implementing the new Centers for Medicare and Medicaid (CMS) regulations governing the Medicaid waiver program. Please share the attached letter (the text of the letter is below) with staff, families and other interested stakeholders.

Dear friends:

The Division of Senior and Disabilities Services (SDS) manages four Medicaid waivers that provide access to home and community-based services for low-income Alaskans who are elderly, or experience a physical, intellectual or developmental disability. On March 17, 2014, the Centers for Medicare and Medicaid Services (CMS), the federal agency that administers the Medicaid waiver program, released new regulations that will require significant changes to the way services are provided through the Medicaid waiver program.

First, the regulations define and describe the qualities and characteristics of a “home and community-based setting,” and make it a requirement that all waiver services, in order to be considered for reimbursement, must be provided in settings that have these qualities. The state must develop a “transition plan” that informs CMS regarding the state’s current level of compliance, as well as the specific actions the state will take to meet the requirements. The state must submit this plan to CMS no later than March 17, 2015, one year after the regulations were issued. SDS is in the process of working with providers toward this goal, and is confident that the transition to the new setting requirements will be complete within the maximum five-year transition period.

Also, the new regulations go farther than ever before in mandating the requirements for “person-centered planning,” the process by which waiver recipients and their supporters develop a plan of care (POC) and freely choose service providers. The changes in regulation reflect the belief that recipients have real choice of providers only if that choice is made free from provider influence or pressure. To achieve this “conflict-free case management” as it is described by CMS, provider agencies that offer case management services (or care coordination, as we now call it in our waiver system) may not also provide any other waiver services. There is one exception. If any locality has only one agency willing and able to serve waiver recipients, the state will waive the “conflict-free” requirements and allow the agency to provide both case management and other waiver services.

We understand that news of these changes, especially the transition to “conflict-free case management,” is causing concern in our community of stakeholders. Care coordinators working at agencies that also offer waiver services face uncertainty about future employment. Families worry about losing long-term, successful relationships with care coordinators, and agencies are anticipating big changes to the way they do business. In response, SDS is working with a group of providers, including representatives of the Alaska Association on Developmental Disabilities (AADD) and AGENET, to develop a plan to address these issues and effect changes that will accommodate recipients and their families, assure stability in our service system, and meet the new federal mandates.

A few specific clarifications:

- March 15, 2015 is the date by which the state must submit to CMS its “transition plan,” not the date on which conflict-free case management must be in place in Alaska. SDS is in discussion with CMS regarding the transition, and will inform stakeholders on further progress and deadlines;
- Conflict-free case management allows, but does not require case managers to be “sole practitioner” entities; a group of two or more care coordinators may work together in a care coordination agency;
- SDS understands the challenges of verifying that an agency in a certain locality is the only agency willing and able to provide waiver services. We are working with providers to devise a system to manage this exception and ensure stability in the system;
- SDS considered the option of using existing “Community Developmental Disability” and “Older Alaskans” grant funds to build capacity for independent case management in Alaska. Discussions with providers convinced us that this strategy may have destabilizing effects on services currently funded through grants, and we have abandoned this strategy for at least two years.

Thanks to all the providers, provider agency board members, recipients and families who have participated in our efforts to inform you about the new CMS regulations as well as our collaborative efforts to meet the new challenges the regulations bring. Please feel free to write or call me directly, or, you may also contact Jon Sherwood at 465-5481, jon.sherwood@alaska.gov, or Angela Salerno at 465-4874, angela.salerno@alaska.gov.

Sincerely,



Duane G. Mayes, MS CDMS CRC

Director

Division of Senior & Disabilities Services

550 W 8th St. Anchorage Alaska, 99501

email: duane.mayes@alaska.gov

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work cell: (907) 351-6005

Text Messaging: 19073516005

VP: 206-452-5853

888-735-0513



January 21, 2015

SDS E-Alert – SAVE THE DATE – Opportunity for Public Comment on State of Alaska CMS Regulation Transition Plan

On Monday, January 26, SDS will release its draft CMS regulation “Transition Plan.” The Plan outlines the state’s process for assessing provider and state readiness for new federal regulations at CFR 42 441(c)(4) *Home and Community-Based Settings*, as well as its plan for coming into compliance. The Plan will be available for public comment from January 26th through February 28th. Information on submitting written comment will follow.

This January 30th webinar is an opportunity for questions and oral public comment.

CMS Regulation Transition Plan- Opportunity for Public Comment

Join us for a webinar on Jan 30, 2015 at 1:30 PM AKST.

Register now!

<https://attendee.gotowebinar.com/register/5376033880690811906>

Join Angela Salerno, Manager, Policy and Program Development Unit, Senior and Disabilities Services, for an opportunity to comment on the draft Transition Plan. Learn about proposed State regulation changes that will bring the state into compliance.

After registering, you will receive a confirmation email containing information about joining the webinar.

. Choose one of the following audio options:

TO USE YOUR COMPUTER'S AUDIO:

When the webinar begins, you will be connected to audio using your computer's microphone and speakers (VoIP). A headset is recommended.

--OR--

TO USE YOUR TELEPHONE:

If you prefer to use your phone, you must select "Use Telephone" after joining the webinar and call in using the numbers below.

United States

Toll: +1 (415) 655-0055

Access Code: 990-503-706

Audio PIN: Shown after joining the webinar



[View System Requirements](#)



January 26, 2015

SDS E-Alert – CMS Regulation Transition Plan Available for Public Comment

In accordance with CFR 42 §441.301(c)(6) the State of Alaska offers this *Transition Plan* for public comment. The Plan outlines the state's process for assessing provider and state readiness for new federal regulations at CFR 42 441(c)(4) *Home and Community-Based Settings*, as well as its plan for coming into compliance. The Plan will be available for public comment from January 26th through February 28th, and may be modified in response to public comment.

Please send written comments to Angela Salerno, Manager, Policy and Program Development
by mail: PO Box 110680, Juneau, AK 99811-060
by electronic mail: angela.salerno@alaska.gov

Interested individuals may also provide oral comment during a statewide webinar on Friday, January 30th, 1:30 – 3:00.

If you plan on attending, please register for the webinar at the following address, whether or not you plan to offer comment:

<https://attendee.gotowebinar.com/register/5376033880690811906>

Choose one of the following audio options for the webinar:

TO USE YOUR COMPUTER'S AUDIO:

When the webinar begins, you will be connected to audio using your computer's microphone and speakers (VoIP). A headset is recommended.

--OR--

TO USE YOUR TELEPHONE:

If you prefer to use your phone, you must select "Use Telephone" after joining the webinar and call in using the numbers below.

United States

Toll: +1 (415) 655-0055

Access Code: 990-503-706

Audio PIN: Shown after joining the webinar



September 15, 2015

SDS E-Alert – Revised *Transition Plan for Home and Community-Based Service Settings* Available for Public Comment; Webinar

SDS has revised its *Transition Plan for Home and Community-Based Services* as required by federal regulation at 42 CFR §441.301(c)(6), and is requesting comment from recipients, waiver service providers and other stakeholders. The plan outlines the process the state and providers will undertake to comply with the mandate that all service settings exhibit home and community-based characteristics..

On January 26, 2015, SDS published for public comment the draft *Transition Plan for Home and Community-Based Services*. On March 17, 2015, SDS submitted the draft plan to the Centers for Medicare and Medicaid Services (CMS) for review. The *Transition Plan* underwent two levels of CMS review, one to verify that the required elements were present in the *Plan*, the second to evaluate the state's process for verifying the home and community-based nature of all settings where waiver services are delivered. On July 9, 2015, SDS received the CMS review and response.

The *Plan* successfully passed the first review, but not the second. In its evaluation, CMS found that, because the response rate to the *Provider Self-Assessment of Settings* was inadequate, SDS had not sufficiently verified that every setting in which services are provided have home and community-based characteristics. To be in compliance with federal regulation, SDS has revised the *Transition Plan* to include implementation of an additional process to successfully verify the home and community-based nature of all waiver service settings, and to remediate non-compliant settings. In addition, CMS found deficiencies in the SDS review and evaluation of current waiver regulations and *Conditions of Participation*. SDS has re-evaluated waiver, assisted living home, foster care, and associated regulations for a more comprehensive assessment of amendments needed to bring the state into compliance with federal regulation.

The revised *Plan* is attached to this E-Alert, and is also available on the [SDS web](#) and on the [State of Alaska On-Line Public Notice](#) system. SDS will accept public comment on the *Plan* until 5:00 pm, October 15. Please send written comments to:

Jetta Whittaker
PO Box 110680
Juneau, AK 99811-0680 or
jetta.whittaker@alaska.gov

The original *Plan* is also available for review in the [SDS News Archives](#).

SDS will also host a webinar on Tuesday, September 29, 1:30 – 3:00 to provide more information and take oral public comment. To register for the webinar:

<https://attendee.gotowebinar.com/register/3829630155004210946>

Fairbanks Daily NewsMiner

Notice of Opportunity for Public Comment:

Statewide Transition Plan for Home and Community- Based Services

The Department of Health and Social Services, Division of Senior and Disabilities Services (SDS) has revised its Transition Plan for Home and Community-Based Services required by federal regulation at 42 CFR §441.301(c)(6), and is requesting comment from recipients, waiver service providers and other stakeholders. The plan outlines the process the state and providers will undertake to comply with the mandate that all service settings exhibit home and community-based characteristics.

SDS will accept public comment on the Transition Plan until 5:00 pm, October 15. Please send written comments to:

Jetta Whittaker

PO Box 110680

Juneau, AK 99811-0680
or

jetta.whittaker@alaska.gov

The revised Plan available on the State of Alaska On-Line Public Notice system and the SDS web. The original Transition Plan is also available for review in the SDS News Archives.

SDS will also host a webinar on Tuesday, September 29, 1:30 – 3:00 to provide more information and take oral public comment. To register for the webinar:

<https://attendee.gotowebinar.com/register/3829630155004210946>

Published: September 20, 2015



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Anchorage Daily News

Notice of Opportunity for Public Comment: Statewide Transition Plan for Home and Community-Based Services

The Department of Health and Social Services, Division of Senior and Disabilities services (SOS) has revised its Transition Plan for Home and Community-Based Services

required by federal regulation at 42 CFR §441.301(c)(6), and is requesting comment from recipients, waiver service providers and other stakeholders. The plan outlines the process the state and providers will undertake to comply with the mandate that all service settings exhibit home and community-based characteristics.

DS will accept public comment on the Transition Plan until 5:00 pm, October 15.

Please send written comments to: Jetta Whittaker

PO Box 110680

Juneau, AK 99811-0680 or jetla.whitlaker@alaska.gov

The revised Plan available on the State of Alaska On-Line Public Notice system and the SOS web. The original Transition Plan is also available for review in the SDS News Archives.

SOS will also host a webinar on Tuesday, September 29, 1:30 – 3:00b provide more information and take oral public comment. To register for the webinar: <https://atlendee.gotowebinar.com/register/3829630155004210946>

Tribal Consultation Notice

Revised Transition Plan for Home and Community-Based Services September 15, 2015

The Department of Health and Social Services, Division of Senior and Disabilities Services (SDS) has revised its *Transition Plan for Home and Community-Based Services* required by federal regulation at 42 CFR §441.301(c)(6), and is requesting comment from recipients, waiver service providers and other stakeholders. The plan outlines the process the state and providers will undertake to comply with the mandate that all service settings exhibit home and community-based characteristics.

On January 26, 2015, SDS published for public comment the draft *Transition Plan for Home and Community-Based Services*. On March 17, 2015, SDS submitted the draft plan to Centers for Medicare and Medicaid Services (CMS) for review. The *Transition Plan* underwent two levels of CMS review, one to verify that the required elements were present in the *Plan*, the second to evaluate the state's process for verifying the home and community-based nature of all settings where waiver services are delivered. On July 9, 2015, SDS received the CMS review and response.

The *Plan* successfully passed the first review, but not the second. In its evaluation, CMS found that, because the response rate to the *Provider Self-Assessment of Settings* was inadequate, SDS had not sufficiently verified that every setting in which services are provided have home and community-based characteristics.

To be in compliance with federal regulation, SDS has revised the *Transition Plan* to include implementation of an additional process to successfully verify the home and community-based nature of all waiver service settings, and to remediate non-compliant settings. In addition, CMS found deficiencies in the SDS review and evaluation of current waiver regulations and *Conditions of Participation*. SDS has re-evaluated waiver, assisted living home, foster care, and associated regulations for a more comprehensive assessment of amendments needed to bring the state into compliance with federal regulation.

The revised *Plan* is attached, and is also available on the [SDS web](#). SDS will accept public comment on the *Plan* until 5:00 pm, October 15. Please send written comments to:

Jetta Whittaker
PO Box 110680
Juneau, AK 99811-0680 or
jetta.whittaker@alaska.gov

The original *Transition Plan* is also available for review in the [SDS News Archives](#).

SDS will also host a webinar on Tuesday, September 29, 1:30 – 3:00 to provide more information and take oral public comment. To register for the webinar:

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